CIRCUIT RULES

of the

UNITED STATES COURT OF APPEALS

for the

DISTRICT OF COLUMBIA CIRCUIT

(Together with the corresponding Federal Rules of Appellate Procedure)

AND

HANDBOOK OF PRACTICE AND INTERNAL PROCEDURES

Circuit Rules and Handbook
Effective January 1, 1994
(Reprinted with Updates and Technical Revisions April 1997)

Foreword

These 1997 revisions are a result of changes to the Federal Rules of Appellate Procedure ("FRAP") and this court's rules, all adopted since January 1994. There have been minor changes to many of the federal rules since 1994 and Rule 22 has been revised significantly to conform to recent legislation concerning habeas corpus petitions. FRAP 25 (Filing and Service) has been largely rewritten; among other things, Rule 25 (a)(4) has been revised such that the clerk can no longer reject for filing a document solely on the basis of improper form. FRAP 9 (Release in a Criminal Case), FRAP 33 (Appeal Conferences), FRAP 41(b) (Stay of Mandate Pending Petition for Certiorari), and FRAP 48 (Masters), amended effective December 1, 1994, FRAP 47 (Rules of a Court of Appeals), amended effective December 1, 1995, and FRAP 21 (Writs of Mandamus and Prohibition), amended effective December 1, 1996, were entirely rewritten.

In addition, there are two new local rules of which practitioners should be aware -- D.C. Cir. Rule 47.5 (decoupling direct criminal appeals from all postconviction proceedings absent extraordinary circumstances), and D.C. Cir. Rule 47.6 (procedures for appealing from the Alien Terrorist Removal Court).

Finally, the Prison Litigation Reform Act of 1996 has effected substantial changes in the handling of most prisoner litigation. Including, most significantly for the courts of appeals, standards and procedures for filing and reviewing *in forma pauperis* petitions. Although FRAP 24 (Proceedings *In Forma Pauperis*) has not yet been amended to reflect these changes, this court's new procedures are reflected in the *Handbook of Practice and Internal Procedures*.

JUDGES OF THE COURT

Chief Judge

Harry T. Edwards

Circuit Judges

Patricia M. Wald
Laurence H. Silberman
Stephen F. Williams
Douglas H. Ginsburg
David B. Sentelle
Karen LeCraft Henderson
A. Raymond Randolph
Judith W. Rogers
David S. Tatel

Senior Circuit Judges

Spottswood W. Robinson III (Retired)
James L. Buckley

OFFICERS OF THE COURT

Circuit Executive

Linda J. Ferren

Clerk

Mark J. Langer

Circuit Librarian

Nancy Padgett

Members of the Court's Advisory Committee on Procedures

Liaison

Judge Wald

Chair

John M. Nannes

Members

Thomas Abbenante
John D. Bates
George H. Cohen
Vicki C. Jackson
William Kanter
A.J. Kramer
Stephen C. Leckar
Myles V. Lynk
Maureen E. Mahoney
Katherine Anne Meyer
William Bradford Reynolds
Michael E. Rosman
Barbara S. Wahl
Christopher J. Wright

FREQUENTLY CALLED TELEPHONE NUMBERS

	Room	Telephone
Clerk's Office General Information	5423	273-0300
Information on opinions (recorded)	____	472-9746
Appellate Bulletin Board System (ABBS)*		1-800-426-3231 Local 202-219-9600
Automated Voice Information System (AVIS)		1-800-552-8621 Local 202-273-0926
Circuit Executive	4826	273-0340
Legal Division	3429	273-0729
Circuit Librarian	3518	273-0402

Court Internet WEB site: **www.cadc.uscourts.gov**

---

* There is a per-minute fee for accessing ABBS. To set up an account and obtain a user identification number, interested parties may call the PACER Billing Center at 1-800-676-6856.

FEDERAL RULES OF APPELLATE PROCEDURE AND CORRESPONDING CIRCUIT RULES OF THE DISTRICT OF COLUMBIA CIRCUIT

Federal Rules Adopted Effective July 1, 1968
Including Amendments Received and
Effective Through December 1, 1996

Circuit Rules Effective January 1, 1994
(Reprinted with Updates and Technical Revisions April 1997)

Table of Rules

TITLE I. APPLICABILITY OF RULES

1. Scope of Rules and Title.

   (a) Scope of Rules.

   (b) Rules Not to Affect Jurisdiction.

   (c) Title.

2. Suspension of Rules.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

3. Appeal as of Right—How Taken.

   (a) Filing the Notice of Appeal.

   (b) Joint or Consolidated Appeals.

   (c) Content of the Notice of Appeal.

(d) Serving the Notice of Appeal.

(e) Payment of Fees.

3.1 Appeal From a Judgment Entered by a Magistrate Judge in a Civil Case.

4. Appeal as of Right—When Taken.

(a) Appeal in a Civil Case.

(b) Appeal in a Criminal Case.

(c) Appeal by an Inmate Confined in an Institution.

5. Appeal by Permission Under 28 U.S.C. § 1292(b).

(a) Petition for Permission to Appeal.

(b) Content of Petition; Answer.

(c) Form of Papers; Number of Copies.

(d) Grant of Permission; Cost Bond; Filing of Record.

5.1 Appeal by Permission Under 28 U.S.C. § 636(c)(5).

(a) Petition for Leave to Appeal; Answer or Cross Petition.

(b) Content of Petition; Answer.

(c) Form of Papers; Number of Copies.

(d) Allowance of the Appeal; Fees; Cost Bond; Filing of Record.

6. Appeal in a Bankruptcy Case From a Final Judgment, Order, or Decree of a District Court or of a Bankruptcy Appellate Panel.

(a) Appeal From a Judgment, Order or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case.

(b) Appeal From a Judgment, Order or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

7. Bond for Costs on Appeal in Civil Cases.

8. Stay or Injunction Pending Appeal.

(a) Stay Must Ordinarily Be Sought in the First Instance in District Court; Motion for Stay in Court of Appeals.

(b) Stay May Be Conditioned Upon Giving of Bond; Proceedings Against Sureties.

(c) Stay in a Criminal Case.

9. Release in a Criminal Case.

(a) Appeals from an Order Regarding Release Before Judgment of Conviction.

(b) Review of an Order Regarding Release After Judgment of Conviction.

(c) Criteria for Release.

10. The Record on Appeal.

(a) Composition of the Record on Appeal.

(b) The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript Is Ordered.

(c) Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable.

(d) Agreed Statement as the Record on Appeal.

(e) Correction or Modification of the Record.

11. Transmission of the Record.

(a) Duty of Appellant.

(b) Duty of Reporter to Prepare and File Transcript; Notice to Court of Appeals; Duty of Clerk to Transmit the Record.

(c) Temporary Retention of Record in District Court for Use in Preparing Appellate Papers.

(d) Extension of Time for Transmission of the Record; Reduction of Time [Abrogated].

(e) Retention of the Record in the District Court by Order of Court.

(f) Stipulation of Parties That Parts of the Record be Retained in the District Court.

(g) Record for Preliminary Hearing in the Court of Appeals.

12. Docketing the Appeal; Filing a Representation Statement; Filing the Record.

(a) Docketing the Appeal.

(b) Filing a Representation Statement.
(c) Filing the Record, Partial Record, or Certificate.

TITLE III. REVIEW OF DECISIONS OF THE UNITED STATES TAX COURT

13. Review of a Decision of the Tax Court.

(a) How Obtained; Time for Filing Notice of Appeal.

(b) Notice of Appeal—How Filed.

(c) Content of the Notice of Appeal; Service of the Notice; Effect of Filing and Service of the Notice.

(d) The Record on Appeal; Transmission of the Record; Filing of the Record.

14. Applicability of Other Rules to Review of Decisions of the Tax Court.

TITLE IV. REVIEW AND ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS

15. Review or Enforcement of an Agency Order—How Obtained; Intervention.

(a) Petition for Review of Order; Joint Petition.

(b) Application for Enforcement of Order; Answer; Default; Cross-Application for Enforcement.

(c) Service of Petition or Application.

(d) Intervention.

(e) Payment of Fees.

15.1. Briefs and Oral Argument in National Labor Relations Board Proceedings.

16. The Record on Review or Enforcement.

(a) Composition of the Record.

(b) Omissions From or Misstatements in the Record.

17. Filing of the Record.

(a) Agency to File; Time for Filing; Notice of Filing.

(b) Filing—What Constitutes.

18. Stay Pending Review.

19. Settlement of Judgments Enforcing Orders.

20. Applicability of Other Rules to Review or Enforcement of Agency Orders.

TITLE V. EXTRAORDINARY WRITS

21. Writs of Mandamus and Prohibition, and Other Extraordinary Writs.

(a) Mandamus or Prohibition to a Court; Petition, Filing, Service, and Docketing.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(c) Other Extraordinary Writs.

(d) Form of Papers; Number of Copies.

TITLE VI. HABEAS CORPUS; PROCEEDINGS *IN FORMA PAUPERIS*

22. Habeas Corpus Proceedings.

(a) Application for the Original Writ.

(b) Certificate of Appealability.

23. Custody of Prisoners in Habeas Corpus Proceedings.

(a) Transfer of Custody Pending Review.

(b) Detention or Release of Prisoner Pending Review of Decision Failing to Release.

(c) Release of Prisoner Pending Review of Decision Ordering Release.

(d) Modification of Initial Order Respecting Custody.

24. Proceedings *In Forma Pauperis*.

(a) Leave to Proceed on Appeal *In Forma Pauperis* From District Court to Court of Appeals.

(b) Leave to Proceed on Appeal or Review *In Forma Pauperis* in Administrative Agency Proceedings.

(c) Form of Briefs, Appendices and Other Papers.

TITLE VII. GENERAL PROVISIONS

25. Filing, Proof of Filing, Service, and Proof of Service.

(a) Filing.

(b) Service of All Papers Required.

(c) Manner of Service.

(d) Proof of Service; Filing.

(e) Number of Copies.

26. Computation and Extension of Time.

(a) Computation of Time.

(b) Enlargement of Time.

(c) Additional Time After Service.

26.1. Corporate Disclosure Statement.

27. Motions.

(a) Content of Motions; Response.

(b) Determination of Motions for Procedural Orders.

(c) Power of a Single Judge to Entertain Motions.

(d) Form of Papers; Number of Copies.

28. Briefs.

(a) Appellant's Brief.

(b) Appellee's Brief.

(c) Reply Brief.

(d) References in Briefs to Parties.

(e) References in Briefs to the Record.

(f) Reproduction of Statutes, Rules, Regulations, Etc.

(g) Length of Briefs.

(h) Briefs in Cases Involving Cross Appeals.

(i) Briefs in Cases Involving Multiple Appellants or Appellees.

(j) Citation of Supplemental Authorities.

29. Brief of an *Amicus Curiae*.

30. Appendix to the Briefs.

(a) Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies.

(b) Determination of Contents of Appendix; Cost of Producing.

(c) Alternative Method of Designating Contents of the Appendix; How References to the Record May be Made in the Briefs When Alternative Method is Used.

(d) Arrangement of the Appendix.

(e) Reproduction of Exhibits.

(f) Hearing of Appeals on the Original Record Without the Necessity of an Appendix.

31. Filing and Service of a Brief.

(a) Time for Serving and Filing Briefs.

(b) Number of Copies to be Filed and Served.

(c) Consequence of Failure to File Briefs.

32. Form of Briefs, the Appendix and Other Papers.

(a) Form of Briefs and the Appendix.

(b) Form of Other Papers.

33. Appeal Conferences.

34. Oral Argument.

(a) In General; Local Rule.

(b) Notice of Argument; Postponement.

(c) Order and Content of Argument.

(d) Cross and Separate Appeals.

(e) Non-Appearance of Parties.

(f) Submission on Briefs.

(g) Use of Physical Exhibits at Argument; Removal.

35. Determination of Causes by the Court E*n Banc*.

(a) When Hearing or Rehearing *En Banc* Will be Ordered.

(b) Suggestion of a Party for Hearing or Rehearing *En Banc*.

(c) Time for Suggestion of a Party for Hearing or Rehearing *En Banc*; Suggestion Does Not Stay Mandate.

(d) Number of Copies.

36. Entry of Judgment.

37. Interest on Judgments.

38. Damages and Costs for Frivolous Appeals.

39. Costs.

(a) To Whom Allowed.

(b) Costs for and Against the United States.

(c) Costs of Briefs, Appendices, and Copies of Records.

(d) Bill of Costs; Objections; Costs to be Inserted in Mandate or Added Later.

(e) Costs on Appeal Taxable in the District Courts.

40. Petition for Rehearing.

(a) Time for Filing; Content; Answer; Action by Court if Granted.

(b) Form of Petition; Length.

41. Issuance of Mandate; Stay of Mandate.

(a) Date of Issuance.

(b) Stay of Mandate Pending Petition for Certiorari.

42. Voluntary Dismissal.

(a) Dismissal in the District Court.

(b) Dismissal in the Court of Appeals.

43. Substitution of Parties.

(a) Death of a Party.

(b) Substitution for Other Causes.

(c) Public Officers; Death or Separation From Office.

44. Cases Involving Constitutional Questions Where United States Is Not a Party.

45. Duties of Clerks.

(a) General Provisions.

(b) The Docket; Calendar; Other Records Required.

(c) Notice of Orders or Judgments.

(d) Custody of Records and Papers.

46. Attorneys.

(a) Admission to the Bar of a Court of Appeals; Eligibility; Procedure for Admission.

(b) Suspension or Disbarment.

(c) Disciplinary Power of the Court Over Attorneys.

47. Rules of a Court of Appeals.

(a) Local Rules.

(b) Procedure When There Is No Controlling Law.

CIRCUIT RULES FOR WHICH THERE IS NO CORRESPONDING FEDERAL RULE

47.1. Matters Under Seal.

(a) Case With Record Under Seal.

(b) Agreement to Unseal.

(c) Motion to Unseal.

(d) Briefs Containing Material Under Seal.

(e) Appendices Containing Matters Under Seal.

47.2. Appeal Expedited By Statute; Habeas Corpus Proceeding; Sentencing Appeal.

(a) Appeal Expedited by Statute, and Habeas Corpus Proceeding.

(b) Sentencing Appeal Pursuant to 18 U.S.C. § 3742.

47.3. Judicial Conference.

(a) Purpose.

(b) Conference Arrangements and Procedures.

(c) Composition.

47.4. Advisory Committee on Procedures.

(a) Establishment of Committee; Membership.

(b) Committee Functions.

(c) Terms of Members.

47.5. Processing of Direct Criminal Appeals.

47.6 Appeals From the Alien Terrorist Removal Court.

(a) In General.

(b) Appeal From the Denial of a Removal Application (8 U.S.C § 1535 (a)).

(c) Interlocutory Appeal From Discovery Orders (8 U.S.C. § 1535 (b)).

(d) Appeal From a Decision After a Removal Hearing (8 U.S.C § 1535 (c)).

(e) Appeal From a Release or Detention Order (8 U.S.C § 1535 (e)).

48. Masters.

APPENDIX OF FORMS FOR THE FEDERAL RULES OF APPELLATE PROCEDURE

1. Notice of Appeal to a Court of Appeals From a Judgment or Order of a District Court.

2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court.

3. Petition for Review of Order of an Agency, Board, Commission or Officer.

4. Affidavit to Accompany Motion for Leave to Appeal *In Forma Pauperis*.

5. Notice of Appeal to a Court of Appeals from a Judgment or Order of a District Court or a Bankruptcy Appellate Panel.

APPENDIX TO THE CIRCUIT RULES OF THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

1. Court of Appeals Fee Schedule.

2. Rules of Disciplinary Enforcement for the United States Court of Appeals for the District of Columbia Circuit.

3. Appellate Mediation Program.

TITLE I. APPLICABILITY OF RULES

RULE 1. SCOPE OF RULES AND TITLE

(a) Scope of Rules. These rules govern procedure in appeals to United States courts of appeals from the United States district courts and the United States Tax Court; in appeals from bankruptcy appellate panels; in proceedings in the courts of appeals for review or enforcement of orders of administrative agencies, boards, commissions and officers of the United States; and in applications for writs or other relief which a court of appeals or a judge thereof is competent to give. When these rules provide for the making of a motion or application in the district court, the procedure for making such motion or application shall be in accordance with the practice of the district court.

(b) Rules Not to Affect Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law.

(c) These rules may be known and cited as the Federal Rules of Appellate Procedure.

[Amended effective August 1, 1979; December 1, 1989; December 1, 1994.]

CIRCUIT RULE 1

SCOPE OF RULES; GENERAL PROVISIONS

The Circuit Rules of the United States Court of Appeals for the District of Columbia Circuit are adopted pursuant to Rule 47, Federal Rules of Appellate Procedure ("FRAP"), to replace all General Rules heretofore adopted by this court. Circuit Rules are keyed to correspondingly numbered provisions of the FRAP. (Several rules dealing with miscellaneous subjects are included after Circuit Rule 47.)

The court's Handbook of Practice and Internal Procedures ("Handbook") should also be consulted. In the event of any conflict between the Circuit Rules and the Handbook, the Circuit Rules prevail.

(a) Name, Seal, and Process.

(1) **Name**. The name of this court, as fixed by Chapter 3 of Title 28 of the United States Code, is "United States Court of Appeals for the District of Columbia Circuit."

(2) **Seal**. The seal of the court shall contain the words "United States" on the upper part of the outer edge, preceded and followed by a star; the words "Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "for the District of Columbia Circuit" in 5 lines in the center.

(3) **Process**. Writs, process, orders, and judgments of this court shall be signed by a judge or judges of the court, or by the clerk at the direction of the court.

(b) Sessions.

(1) **No Formal Terms -- Court Always Open**. The court does not hold formal terms, but is open the year round for such purposes as docketing appeals; filing pleadings, records, and opinions; and entering orders and judgments.

(2) **Regular Sessions**. Regular sessions of the court shall be held at Washington, D.C., commencing on such day in September as the court may designate, and terminating at such time as the court may designate, and shall be adjourned as the court may from time to time direct.

(3) **Special Sessions**. Special sessions may be held at any time by order of the court.

(c) Court Employees Not To Practice Law. No one employed in any capacity by the court shall engage in the practice of law while continuing in such position; no former employee shall practice as an attorney in any matter connected with any case pending in the court during his or her term of service. For the purposes of this rule, a case is pending in this court upon the docketing of a notice of appeal, or the filing of a petition, in this court. (See also FRAP 45(a).)

RULE 2. SUSPENSION OF RULES

In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

CIRCUIT RULE 2

SUSPENSION OF RULES

In the interest of expediting decisions or for other good cause, the court may suspend the requirements of these Circuit Rules.

TITLE II. APPEALS FROM JUDGMENTS AND ORDERS OF DISTRICT COURTS

RULE 3. APPEAL AS OF RIGHT—HOW TAKEN

(a) Filing the Notice of Appeal. An appeal permitted by law as of right from a district court to a court of appeals must be taken by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4. At the time of filing, the appellant must furnish the clerk with sufficient copies of the notice of appeal to enable the clerk to comply promptly with the requirements of subdivision (d) of this Rule 3. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal. Appeals by permission under 28 U.S.C. § 1292(b) and appeals in bankruptcy must be taken in the manner prescribed by Rule 5 and Rule 6 respectively.

(b) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of a district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the court of appeals upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of the Notice of Appeal. A notice of appeal shall specify the party or parties taking the appeal by naming each appellant in either the caption or the body of the notice of appeal. An attorney representing more than one party may fulfill this requirement by describing those parties with such terms as "all plaintiffs," "the defendants," "the plaintiffs A, B, et al.," or "all defendants except X." A notice of appeal filed *pro se* is filed on behalf of the party signing the notice and the signer's spouse and minor children, if they are parties, unless the notice of appeal clearly indicates a contrary intent. In a class action, whether or not the class has been certified, it is

sufficient for the notice to name one person qualified to bring the appeal as representative of the class. A notice of appeal also must designate the judgment, order, or part thereof appealed from, and must name the court to which the appeal is taken. An appeal will not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice. Form 1 in the Appendix of Forms is a suggested form for a notice of appeal.

(d) Serving the Notice of Appeal. The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy to each party's counsel of record (apart from the appellant's) or, if a party is not represented by counsel, to the party's last known address. The clerk of the district court shall forthwith send a copy of the notice and of the docket entries to the clerk of the court of appeals named in the notice. The clerk of the district court shall likewise send a copy of any later docket entry in the case to the clerk of the court of appeals. When a defendant appeals in a criminal case, the clerk of the district court shall also serve a copy of the notice of appeal upon the defendant, either by personal service or by mail addressed to the defendant. The clerk shall note on each copy served the date when the notice of appeal was filed and, if the notice of appeal was filed in the manner provided in Rule 4(c) by an inmate confined in an institution, the date when the clerk received the notice of appeal. The clerk's failure to serve notice does not affect the validity of the appeal. Service is sufficient notwithstanding the death of a party or the party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

(e) Payment of Fees. Upon the filing of any separate or joint notice of appeal from the district court, the appellant shall pay to the clerk of the district court such fees as are established by statute, and also the docket fee prescribed by the Judicial Conference of the

United States, the latter to be received by the clerk of the district court on behalf of the court of appeals.

[Amended effective August 1, 1979; July 1, 1986; December 1, 1989; December 1, 1993; December 1, 1994.]

RULE 3.1. APPEAL FROM A JUDGMENT ENTERED BY A MAGISTRATE JUDGE IN A CIVIL CASE

When the parties consent to a trial before a magistrate judge under 28 U.S.C. § 636(c)(1), an appeal from the judgment must be heard by the court of appeals in accordance with 28 U.S.C. § 636(c)(3), unless the parties consent to an appeal on the record to a district judge and thereafter, by petition only, to the court of appeals, in accordance with 28 U.S.C. § 636(c)(4). An appeal under 28 U.S.C. § 636(c)(3) must be taken in identical fashion as an appeal from any other judgment of the district court.

[Amended effective December 1, 1993.]

CIRCUIT RULE 3

APPEAL AS OF RIGHT -- HOW TAKEN

There is no corresponding Circuit Rule.

CIRCUIT RULE 3.1

APPEAL FROM A JUDGMENT ENTERED BY MAGISTRATE IN A CIVIL CASE

There is no corresponding Circuit Rule.

RULE 4. APPEAL AS OF RIGHT—WHEN TAKEN

(a) Appeal in a Civil Case.

(1) Except as provided in paragraph (a)(4) of the Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days after such entry. If a notice of appeal is mistakenly filed in the court of appeals, the clerk of the court of appeals shall note thereon the date when the clerk received the notice and send it to the clerk of the district court and the notice will be treated as filed in the district court on the date so noted.

(2) A notice of appeal filed after the court announces a decision or order but before the entry of the judgment or order is treated as filed on the day of and after the entry.

(3) If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

(4) If any party files a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion under the Federal Rules of Civil Procedure:

> (A) for judgment under Rule 50(b);
>
> (B) to amend or make additional findings of fact under Rule 52(b), whether or not granting the motion would alter the judgment;
>
> (C) to alter or amend the judgment under Rule 59;

(D) for attorney's fees under Rule 54 if a district court under Rule 58 extends the time for appeal;

(E) for a new trial under Rule 59; or

(F) for relief under Rule 60 if the motion is filed no later than 10 days after the entry of judgment.

A notice of appeal filed after announcement or entry of the judgment but before disposition of any of the above motions is ineffective to appeal from the judgment or order, or part thereof, specified in the notice of appeal, until the entry of the order disposing of the last such motion outstanding. Appellate review of an order disposing of any of the above motions requires the party, in compliance with Appellate Rule 3(c), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment must file a notice, or amended notice, of appeal within the time prescribed by this Rule 4 measured from the entry of the order disposing of the last such motion outstanding. No additional fees will be required for filing an amended notice.

(5) The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a). Any such motion which is filed before expiration of the prescribed time may be *ex parte* unless the court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties in accordance with local rules. No such extension shall exceed 30 days past such prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

(6) The district court, if it finds (a) that a party entitled to notice of the entry of a judgment or order did not receive such notice from the clerk or any party within 21 days of its entry and (b) that no party would be prejudiced, may, upon motion filed within 180 days of entry of the judgment or order or within 7 days of receipt of such notice, whichever is earlier, reopen the time for appeal for a period of

14 days from the date of entry of the order reopening the time for appeal.

(7) A judgment or order is entered within the meaning of this Rule 4(a) when it is entered in compliance with Rules 58 and 79(a) of the Federal Rules of Civil Procedure.

(b) Appeal in a Criminal Case

In a criminal case, a defendant shall file the notice of appeal in the district court within 10 days after the entry either of the judgment or order appealed from, or of a notice of appeal by the Government. A notice of appeal filed after the announcement of a decision, sentence, or order--but before entry of the judgment or order--is treated as filed on the date of and after the entry. If a defendant makes a timely motion specified immediately below, in accordance with the Federal Rules of Criminal Procedure, an appeal from a judgment of conviction must be taken within 10 days after the entry of the order disposing of the last such motion outstanding, or within 10 days after the entry of the judgment of conviction, whichever is later. This provision applies to a timely motion:

(1) for judgment of acquittal;

(2) for arrest of judgment;

(3) for a new trial on any ground other than newly discovered evidence; or

(4) for a new trial based on the ground of newly discovered evidence if the motion is made before or within 10 days after entry of the judgment.

A notice of appeal filed after the court announces a decision, sentence, or order but before it disposes of any of the above motions, is ineffective until the date of the entry of the order disposing of the last such motion outstanding, or until the date of the entry of the judgment of conviction, whichever is later. Notwithstanding the

provisions of Rule 3(c), a valid notice of appeal is effective without amendment to appeal from an order disposing of any of the above motions. When an appeal by the government is authorized by statute, the notice of appeal must be filed in the district court within 30 days after (i) the entry of the judgment or order appealed from or (ii) the filing of a notice of appeal by a defendant.

A judgment or order is entered within the meaning of this subdivision when it is entered on the criminal docket. Upon a showing of excusable neglect, the district court may -- before or after the time has expired, with or without motion and notice -- extend the time for filing a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this subdivision.

The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under Fed. R. Crim. P. 35(c), nor does the filing of a motion under Fed. R. Crim. P. 35(c) affect the validity of a notice of appeal filed before entry of the order disposing of the motion.

(c) Appeal by an Inmate Confined in an Institution

If an inmate confined in an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be shown by a notarized statement or by a declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid. In a civil case in which the first notice of appeal is filed in the manner provided in this subdivision (c), the 14-day period provided in paragraph (a)(3) of this Rule 4 for another party to file a notice of appeal runs from the date when the district court receives the first notice of appeal. In a criminal case in which a defendant files a notice of appeal in the manner provided in this subdivision (c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's receipt of the defendant's notice of appeal.

[Amended effective August 1, 1979; November 18, 1988; December 1, 1991; December 1, 1993; December 1, 1995.]

CIRCUIT RULE 4

APPEAL AS OF RIGHT -- WHEN TAKEN

There is no corresponding Circuit Rule.

RULE 5. APPEAL BY PERMISSION UNDER 28 U.S.C. § 1292(b)

(a) Petition for Permission to Appeal. An appeal from an interlocutory order containing the statement prescribed by 28 U.S.C. § 1292(b) may be sought by filing a petition for permission to appeal with the clerk of the court of appeals within 10 days after the entry of such order in the district court with proof of service on all other parties to the action in the district court. An order may be amended to include the prescribed statement at any time, and permission to appeal may be sought within 10 days after entry of the order as amended.

(b) Content of Petition; Answer. The petition shall contain a statement of the facts necessary to an understanding of the controlling question of law determined by the order of the district court; a statement of the question itself; and a statement of the reasons why a substantial basis exists for a difference of opinion on the question and why an immediate appeal may materially advance the termination of the litigation. The petition shall include or have annexed thereto a copy of the order from which appeal is sought and of any findings of fact, conclusions of law and opinion relating thereto. Within 7 days after service of the petition an adverse party may file an answer in opposition. The application and answer shall be submitted without oral argument unless otherwise ordered.

(c) Form of Papers; Number of Copies. All papers may be typewritten. An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

(d) Grant of Permission; Cost Bond; Filing of Record. Within 10 days after the entry of an order granting permission to appeal the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon

receipt of such notice the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b). A notice of appeal need not be filed.

[Amended effective August 1, 1979; December 1, 1994]

RULE 5.1. APPEAL BY PERMISSION UNDER 28 U.S.C. § 636(c)(5)

(a) Petition for Leave to Appeal; Answer or Cross Petition. An appeal from a district court judgment, entered after an appeal under 28 U.S.C. § 636(c)(4) to a district judge from a judgment entered upon direction of a magistrate judge in a civil case, may be sought by filing a petition for leave to appeal. An appeal on petition for leave to appeal is not a matter of right, but its allowance is a matter of sound judicial discretion. The petition shall be filed with the clerk of the court of appeals within the time provided by Rule 4(a) for filing a notice of appeal, with proof of service on all parties to the action in the district court. A notice of appeal need not be filed. Within 14 days after service of the petition, a party may file an answer in opposition or a cross petition.

(b) Content of Petition; Answer. The petition for leave to appeal shall contain a statement of the facts necessary to an understanding of the questions to be presented by the appeal; a statement of those questions and of the relief sought; a statement of the reasons why in the opinion of the petitioner the appeal should be allowed; and a copy of the order, decree or judgment complained of and any opinion or memorandum relating thereto. The petition and answer shall be submitted to a panel of judges of the court of appeals without oral argument unless otherwise ordered.

(c) Form of Papers; Number of Copies. All papers may be typewritten. An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

(d) Allowance of the Appeal; Fees; Cost Bond; Filing of Record. Within 10 days after the entry of an order granting the appeal, the appellant shall (1) pay to the clerk of the district court the fees established by statute and the docket fee prescribed by the Judicial Conference of the United States and (2) file a bond for costs if required pursuant to Rule 7. The clerk of the district court shall notify the clerk of the court of appeals of the payment of the fees. Upon receipt of such notice, the clerk of the court of appeals shall enter the appeal upon the docket. The record shall be transmitted and filed in accordance with Rules 11 and 12(b).

[Amended effective December 1, 1993; December 1, 1994.]

CIRCUIT RULE 5

APPEAL BY PERMISSION UNDER 28 U.S.C. § 1292(b)

There is no corresponding Circuit Rule

CIRCUIT RULE 5.1

APPEAL BY PERMISSION UNDER 28 U.S.C. § 636(c)(5)

There is no corresponding Circuit Rule.

RULE 6. APPEAL IN A BANKRUPTCY CASE FROM A FINAL JUDGMENT, ORDER, OR DECREE OF A DISTRICT COURT OR OF A BANKRUPTCY APPELLATE PANEL

(a) Appeal From a Judgment, Order or Decree of a District Court Exercising Original Jurisdiction in a Bankruptcy Case. An appeal to a court of appeals from a final judgment, order or decree of a district court exercising jurisdiction pursuant to 28 U.S.C. § 1334 shall be taken in identical fashion as appeals from other judgments, orders or decrees of district courts in civil actions.

(b) Appeal From a Judgment, Order or Decree of a District Court or Bankruptcy Appellate Panel Exercising Appellate Jurisdiction in a Bankruptcy Case.

(1) *Applicability of Other Rules.* All provisions of these rules are applicable to an appeal to a court of appeals pursuant to 28 U.S.C. § 158(d) from a final judgment, order or decree of a district court or bankruptcy appellate panel exercising appellate jurisdiction pursuant to 28 U.S.C. § 158(a) or (b), except that:

(i) Rules 3.1, 4(a)(4), 4(b), 5.1, 9, 10, 11, 12(b), 13–20, 22–23, and 24(b) are not applicable;

(ii) the reference in Rule 3(c) to "Form 1 in the Appendix of Forms" shall be read as a reference to Form 5; and

(iii) when the appeal is from a bankruptcy appellate panel, the term "district court" as used in any applicable rule, means "appellate panel".

(2) *Additional Rules.* In addition to the rules made applicable by subsection (b)(1) of this rule, the following rules shall apply to an appeal to a court of appeals pursuant to 28 U.S.C. § 158(d) from a final judgment, order or decree of a district court or of a bankruptcy appellate panel exercising appellate jurisdiction pursuant to 28 U.S.C.

§ 158(a) or (b):

> (i) Effect of a Motion for Rehearing on the Time for Appeal. If any party files a timely motion for rehearing under Bankruptcy Rule 8015 in the district court or the bankruptcy appellate panel, the time for appeal to the court of appeals for all parties runs from the entry of the order disposing of the motion. A notice of appeal filed after announcement or entry of the district court's or bankruptcy appellate panel's judgment, order, or decree, but before disposition of the motion for rehearing, is ineffective until the date of the entry of the order disposing of the motion for rehearing. Appellate review of the order disposing of the motion requires the party, in compliance with Appellate Rules 3(c) and 6(b)(1)(ii), to amend a previously filed notice of appeal. A party intending to challenge an alteration or amendment of the judgment, order, or decree shall file an amended notice of appeal within the time prescribed by Rule 4, excluding 4(a)(4) and 4(b), measured from the entry of the order disposing of the motion. No additional fees will be required for filing the amended notice.
>
> (ii) The Record on Appeal. Within 10 days after filing the notice of appeal, the appellant shall file with the clerk possessed of the record assembled pursuant to Bankruptcy Rule 8006, and serve on the appellee, a statement of the issues to be presented on appeal and a designation of the record to be certified and transmitted to the clerk of the court of appeals. If the appellee deems other parts of the record necessary, the appellee shall, within 10 days after service of the appellant's designation, file with the clerk and serve on the appellant a designation of additional parts to be included. The record, redesignated as provided above, plus the proceedings in the district court or bankruptcy appellate panel and a certified copy of the docket entries prepared by the clerk pursuant to Rule 3(d) shall constitute the record on appeal.

(iii) Transmission of the Record. When the record is complete for purpose of the appeal, the clerk of the district court or the appellate panel, shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court or of the appellate panel shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the court of appeals may designate by local rule, shall not be transmitted by the clerk unless the clerk is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerk for the transportation and receipt of exhibits of unusual bulk or weight. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record. The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the redesignated record, subject to the right of any party to request at any time during the pendency of the appeal that the redesignated record be transmitted.

(iv) Filing of the Record. Upon receipt of the record, the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed. Upon receipt of a certified copy of the docket entries transmitted in lieu of the redesignated record pursuant to rule or order, the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

[Amended effective August 1, 1979; December 1, 1989; December 1, 1991; December 1, 1993.]

CIRCUIT RULE 6

APPEAL IN A BANKRUPTCY CASE FROM A FINAL JUDGMENT OR ORDER OF DISTRICT COURT OR OF BANKRUPTCY APPELLATE PANEL

There is no corresponding Circuit Rule.

RULE 7. BOND FOR COSTS ON APPEAL IN CIVIL CASES

The district court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to ensure payment of costs on appeal in a civil case. The provisions of Rule 8(b) apply to a surety upon a bond given pursuant to this rule.

[Amended effective August 1, 1979.]

CIRCUIT RULE 7

BOND FOR COSTS ON APPEAL IN A CIVIL CASE

There is no corresponding Circuit Rule.

RULE 8. STAY OR INJUNCTION PENDING APPEAL

(a) Stay Must Ordinarily Be Sought in the First Instance in District Court; Motion for Stay in Court of Appeals. Application for a stay of the judgment or order of a district court pending appeal, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the district court. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the district court for the relief sought is not practicable, or that the district court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the district court for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

(b) Stay May Be Conditioned Upon Giving of Bond; Proceedings Against Sureties. Relief available in the court of appeals under this rule may be conditioned upon the filing of a bond or other appropriate security in the district court. If security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the clerk of the district court as the surety's agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. A surety's liability may be enforced on motion in the district court without the necessity of an independent action. The motion and such notice of the motion as the district court prescribes may be served on the clerk of the district court, who shall forthwith mail copies to the sureties if their addresses are known.

(c) Stay in a Criminal Case. A stay in a criminal case shall be had in accordance with the provisions of Rule 38 of the Federal Rules of Criminal Procedure.

[Amended effective July 1, 1986; December 1, 1995.]

CIRCUIT RULE 8

STAY AND EMERGENCY RELIEF PENDING APPEAL FROM JUDGMENT OR ORDER OF DISTRICT COURT

(a) Criteria; Service.

(1) A motion for a stay of a judgment or of an order of the district court or any other motion seeking emergency relief shall state whether such relief was previously requested from the district court and the ruling on that request. The motion shall state the reasons for granting the stay or other emergency relief sought and shall discuss, with specificity, each of the following factors: (i) the likelihood that the moving party will prevail on the merits; (ii) the prospect of irreparable injury to the moving party if relief is withheld; (iii) the possibility of harm to other parties if relief is granted; and (iv) the public interest.

(2) Except in extraordinary circumstances, the motion shall be served by hand or, in the case of counsel located outside the greater Washington metropolitan area, by other form of expedited service. Counsel shall attempt to notify opposing counsel by telephone in advance of the filing of the motion and shall describe in the motion or accompanying memorandum the efforts made to so notify opposing counsel.

(3) There shall be attached to each copy of the motion a copy of the judgment or order involved, and of any pertinent decision, memorandum, opinion, or findings issued by the district court. If the district court's reasons were given orally, the pertinent extract from the reporter's transcript shall be attached, if available.

(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto. A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the appeal in its entirety. When a response to a motion for a stay or other emergency relief is combined with a dispositive motion, the combined pleading shall be no longer than 30 pages. The response to such a combined pleading shall be no longer than 15 pages, and the final reply shall be no longer than 10 pages.

See also Circuit Rule 18 (Stay Pending Review of Agency Decision), Circuit Rule 25 (Filing and Service), and Circuit Rule 27 (Motions and Petitions).

RULE 9. RELEASE IN A CRIMINAL CASE

(a) Appeal From an Order Regarding Release Before Judgment of Conviction. The district court must state in writing, or orally on the record, the reasons for an order regarding release or detention of a defendant in a criminal case. A party appealing from the order, as soon as practicable after filing a notice of appeal with the district court, must file with the court of appeals a copy of the district court's order and its statement of reasons. An appellant who questions the factual basis for the district court's order must file a transcript of any release proceedings in the district court or an explanation of why a transcript has not been obtained. The appeal must be determined promptly. It must be heard, after reasonable notice to the appellee, upon such papers, affidavits, and portions of the record as the parties present or the court may require. Briefs need not be filed unless the court so orders. The court of appeals or a judge thereof may order the release of the defendant pending decision of the appeal.

(b) Review of an Order Regarding Release After Judgment of Conviction. A party entitled to do so may obtain review of a district court's order regarding release that is made after a judgment of conviction by filing a notice of appeal from that order with the district court, or by filing a motion with the court of appeals if the party has already filed a notice of appeal from the judgment of conviction. Both the order and the review are subject to Rule 9(a). In addition, the papers filed by the applicant for review must include a copy of the judgment of conviction.

(c) Criteria for Release. The decision regarding release must be made in accordance with applicable provisions of 18 U.S.C. §§ 3142, 3143, and 3145(c).

[Added effective October 1, 1972; amended effective October 12, 1984; December 1, 1994.]

CIRCUIT RULE 9

RELEASE IN A CRIMINAL CASE

(a) Appeal from a Pretrial Release or Detention Order. An appeal from a pretrial release or detention order shall be expedited. Appellant shall make immediate arrangements for preparation of all necessary transcripts, including the transcript of proceedings before a magistrate judge, and shall notify the court in writing of those arrangements. Unless otherwise ordered by the court or a judge thereof, the following schedule shall apply:

(1) Not later than 5 days after the transcript of record is filed, the appellant shall serve and file an original and 4 copies of a memorandum of law and fact, not to exceed 20 pages, setting forth as many of the matters required by Circuit Rule 9(b) as are relevant. The memorandum of law and fact shall be accompanied by a copy of the order under review and the statement of reasons (including related findings of fact and conclusions of law) entered by the district court.

(2) The appellee may file a responsive memorandum of no more than 20 pages, not later than 5 days after the filing of appellant's memorandum.

(3) The appellant may file a memorandum of no more than 10 pages in reply within 3 days after the filing of appellee's memorandum.

(4) The appeal shall be determined by a panel of the court on the record and pleadings filed, unless oral argument is directed by the court.

(b) Release Pending Appeal from a Judgment of Conviction. The applicant shall file an original and 4 copies of an application pertaining to release pending appeal from a judgment of conviction. The application and the response thereto shall not exceed 20 pages. A reply to the response shall not exceed 10 pages. These page limits may be exceeded only if authorized by order of the court, or a judge

thereof, on motion showing good cause. The application shall contain, in the following order:

(1) The name of the applicant; the district court number of the case; the offense of conviction; the date and terms of sentence.

(2) The reasons given by the district court for the denial or, in the absence of reasons stated by the district court, an account of the facts and reasons relevant to that court's failure to grant the relief sought by the applicant.

(3) Where the applicant is the defendant, a concise statement of the question or questions involved in the appeal, with a showing that the appeal raises a substantial question of law or fact likely to result in reversal or in an order for a new trial. (*See also* FRAP 9(c).) Sufficient facts shall be set forth to present the essential background and the manner in which the question or questions arose in the district court.

(4) Where the applicant is the defendant, a certificate by counsel, or by the applicant if acting pro se, that the appeal is not taken for delay.

(5) The application shall be ruled upon by a panel of the court.

RULE 10. THE RECORD ON APPEAL

(a) Composition of the Record on Appeal. The record on appeal consists of the original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court.

(b) The Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript is Ordered.

(1) Within 10 days after filing the notice of appeal or entry of an order disposing of the last timely motion outstanding of a type specified in Rule 4(a)(4), whichever is later, the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as the appellant deems necessary subject to local rules of the courts of appeals. The order shall be in writing and within the same period a copy shall be filed with the clerk of the district court. If funding is to come from the United States under the Criminal Justice Act, the order shall so state. If no such parts of the proceedings are to be ordered, within the same period the appellant shall file a certificate to that effect.

(2) If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion.

(3) Unless the entire transcript is to be included, the appellant shall, within the 10-day time provided in (b)(1) of this Rule 10, file a statement of the issues the appellant intends to present on the appeal, and shall serve on the appellee a copy of the order or certificate and of the statement. An appellee who believes that a transcript of other parts of the proceedings is necessary, shall, within 10 days after the service of the order or certificate and the statement of the appellant, file and serve on the appellant a designation of additional parts to be included. Unless within 10 days after service of the designation the appellant has ordered such parts, and has so notified the appellee, the

appellee may within the following 10 days either order the parts or move in the district court for an order requiring the appellant to do so.

(4) At the time of ordering, a party must make satisfactory arrangements with the reporter for payment of the cost of the transcript.

(c) Statement of the Evidence or Proceedings When No Report Was Made or When the Transcript Is Unavailable. If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the appellee, who may serve objections or proposed amendments thereto within 10 days after service. Thereupon the statement and any objections or proposed amendments shall be submitted to the district court for settlement and approval and as settled and approved shall be included by the clerk of the district court in the record on appeal.

(d) Agreed Statement as the Record on Appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the court of appeals as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by Rule 11. Copies of the agreed statement may be filed as the appendix required by Rule 30.

(e) Correction or Modification of the Record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident

or is misstated therein, the parties by stipulation, or the district court either before or after the record is transmitted to the court of appeals, or the court of appeals, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the court of appeals.

[Amended effective August 1, 1979; July 1, 1986; April 30, 1991; December 1, 1991; December 1, 1993; December 1, 1995.]

CIRCUIT RULE 10

THE RECORD ON APPEAL

There is no corresponding Circuit Rule.

RULE 11. TRANSMISSION OF THE RECORD

(a) Duty of Appellant. After filing the notice of appeal the appellant, or in the event that more than one appeal is taken, each appellant, shall comply with the provisions of Rule 10(b) and shall take any other action necessary to enable the clerk to assemble and transmit the record. A single record shall be transmitted.

(b) Duty of Reporter to Prepare and File Transcript; Notice to Court of Appeals; Duty of Clerk to Transmit the Record. Upon receipt of an order for a transcript, the reporter shall acknowledge at the foot of the order the fact that the reporter has received it and the date on which the reporter expects to have the transcript completed and shall transmit the order, so endorsed, to the clerk of the court of appeals. If the transcript cannot be completed within 30 days of receipt of the order the reporter shall request an extension of time from the clerk of the court of appeals and the action of the clerk of the court of appeals shall be entered on the docket and the parties notified. In the event of the failure of the reporter to file the transcript within the time allowed, the clerk of the court of appeals shall notify the district judge and take such other steps as may be directed by the court of appeals. Upon completion of the transcript the reporter shall file it with the clerk of the district court and shall notify the clerk of the court of appeals that the reporter has done so.

When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it forthwith to the clerk of the court of appeals. The clerk of the district court shall number the documents comprising the record and shall transmit with the record a list of documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the court of appeals may designate by local rule, shall not be transmitted by the clerk unless the clerk is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) Temporary Retention of Record in District Court for Use in Preparing Appellate Papers. Notwithstanding the provisions of (a) and (b) of this Rule 11, the parties may stipulate, or the district court on motion of any party may order, that the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event the clerk of the district court shall certify to the clerk of the court of appeals that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the district court to transmit the record.

(d) Extension of Time for Transmission of the Record; Reduction of Time. [Abrogated]

(e) Retention of the Record in the District Court by Order of Court. The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record or parts thereof subject to the request of the court of appeals, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

(f) Stipulation of Parties That Parts of the Record Be Retained in the District Court. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the court of appeals shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) Record for Preliminary Hearing in the Court of Appeals. If prior to the time the record is transmitted a party desires to make in the court of appeals a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the court of appeals such parts of the original record as any party shall designate.

[Amended effective August 1, 1979; July 1, 1986.]

CIRCUIT RULE 11

TRANSMISSION OF RECORD ON APPEAL FROM JUDGMENT OR ORDER OF DISTRICT COURT

(a) When Transmitted. Except as provided in Circuit Rule 47.2, the record in all cases shall be transmitted to this court by the clerk of the district court at a time designated by the clerk of this court.

(b) Transcript in Criminal Case. The court reporter shall expedite the preparation and furnishing of the transcript. A copy of any order of the district court directing that transcripts be furnished to appellant shall be transmitted by the clerk of the district court to this court.

See also Circuit Rule 47.1 (Matters under Seal).

RULE 12. DOCKETING THE APPEAL; FILING A REPRESENTATION STATEMENT; FILING THE RECORD

(a) Docketing the Appeal. Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the district court pursuant to Rule 3(d), the clerk of the court of appeals shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the district court, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title.

(b) Filing a Representation Statement. Within 10 days after filing a notice of appeal, unless another time is designated by the court of appeals, the attorney who filed the notice of appeal shall file with the clerk of the court of appeals a statement naming each party represented on appeal by that attorney.

(c) Filing the Record, Partial Record, or Certificate. Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c), the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

[Amended effective August 1, 1979; July 1, 1986; December 1, 1993.]

CIRCUIT RULE 12

DOCKETING STATEMENT IN APPEAL FROM A JUDGMENT OR ORDER OF DISTRICT COURT; STATEMENT BY APPELLEE OR INTERVENOR

(a) Timing. As directed by the court, appellant shall file an original and one copy of a docketing statement and shall serve a copy on all parties and *amici curiae* appearing at that time.

(b) Docketing Statement Form. The docketing statement shall be on a form furnished by the clerk's office and shall contain such information as the form prescribes. Absent good cause for an exception, incomplete docketing statements will be rejected.

(c) Provisional Certificate. Attached to the docketing statement shall be a provisional certificate prepared by appellant setting forth the information required by Circuit Rule 28(a)(1).

(d) Knowledge and Information. The docketing statement and the provisional certificate shall be prepared on the basis of the knowledge and information reasonably available to appellant at the time of filing.

(e) Errors in Docketing Statement. Any party or *amicus* shall bring any errors in the docketing statement or provisional certificate to the attention of the clerk by letter served on all parties and *amici* within 7 days of service of the docketing statement.

(f) Statement by Appellee or Intervenor. Within 7 days of service of the docketing statement or granting of an intervention motion, an appellee or intervenor shall file with the court any statement required by Circuit Rule 26.1.

See also Circuit Rule 46 (Attorneys; Appearance by Law Student).

TITLE III. REVIEW OF DECISIONS OF THE UNITED STATES TAX COURT

RULE 13. REVIEW OF A DECISION OF THE TAX COURT

(a) How Obtained; Time for Filing Notice of Appeal. Review of a decision of the United States Tax Court must be obtained by filing a notice of appeal with the clerk of the Tax Court within 90 days after entry of the Tax Court's decision. At the time of filing the appellant must furnish the clerk with sufficient copies of the notice of appeal to enable the clerk to comply promptly with the requirements of Rule 3(d). If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after entry of the Tax Court's decision.

The running of the time for appeal is terminated as to all parties by a timely motion to vacate or revise a decision made pursuant to the Rules of Practice of the Tax Court. The full time for appeal commences to run and is to be computed from the entry of an order disposing of such motion, or from the entry of decision, whichever is later.

(b) Notice of Appeal—How Filed. The notice of appeal may be filed by deposit in the office of the clerk of the Tax Court in the District of Columbia or by mail addressed to the clerk. If a notice is delivered to the clerk by mail and is received after expiration of the last day allowed for filing, the postmark date shall be deemed to be the date of delivery, subject to the provisions of § 7502 of the Internal Revenue Code of 1954, as amended, and the regulations promulgated pursuant thereto.

(c) Content of the Notice of Appeal; Service of the Notice; Effect of Filing and Service of the Notice. The content of the notice of appeal, the manner of its service, and the effect of the filing of the notice and of its service shall be as prescribed by Rule 3. Form 2 in the Appendix of Forms is a suggested form of the notice of appeal.

(d) The Record on Appeal; Transmission of the Record; Filing of the Record. The provisions of Rules 10, 11 and 12 respecting the record and the time and manner of its transmission and filing and the docketing of the appeal in the court of appeals in cases on appeal from the district courts shall govern in cases on appeal from the Tax Court. Each reference in those rules and in Rule 3 to the district court and to the clerk of the district court shall be read as a reference to the Tax Court and to the clerk of the Tax Court respectively. If appeals are taken from a decision of the Tax Court to more than one court of appeals, the original record shall be transmitted to the court of appeals named in the first notice of appeal filed. Provision for the record in any other appeal shall be made upon appropriate application by the appellant to the court of appeals to which such other appeal is taken.

[Amended effective August 1, 1979; December 1, 1994.]

CIRCUIT RULE 13

REVIEW OF A DECISION OF THE TAX COURT

There is no corresponding Circuit Rule.

RULE 14. APPLICABILITY OF OTHER RULES TO REVIEW OF DECISIONS OF THE TAX COURT

All provisions of these rules are applicable to review of a decision of the Tax Court, except that Rules 4–9, Rules 15–20, and Rules 22 and 23 are not applicable.

CIRCUIT RULE 14

APPLICABILITY OF OTHER RULES TO REVIEW OF DECISIONS OF THE TAX COURT

There is no corresponding Circuit Rule.

TITLE IV. REVIEW AND ENFORCEMENT OF ORDERS OF ADMINISTRATIVE AGENCIES, BOARDS, COMMISSIONS AND OFFICERS

RULE 15. REVIEW OR ENFORCEMENT OF AN AGENCY ORDER — HOW OBTAINED; INTERVENTION

(a) Petition for Review of Order; Joint Petition. Review of an order of an administrative agency, board, commission, or officer (hereinafter, the term "agency" will include agency, board, commission, or officer) must be obtained by filing with the clerk of a court of appeals that is authorized to review such order, within the time prescribed by law, a petition to enjoin, set aside, suspend, modify, or otherwise review, or a notice of appeal, whichever form is indicated by the applicable statute (hereinafter, the term "petition for review" will include a petition to enjoin, set aside, suspend, modify, or otherwise review, or a notice of appeal). The petition must name each party seeking review either in the caption or in the body of the petition. Use of such terms as "et al.," or "petitioners," or "respondents" is not effective to name the parties. The petition also must designate the respondent and the order or part thereof to be reviewed. Form 3 in the Appendix of Forms is a suggested form of a petition for review. In each case the agency must be named respondent. The United States will also be a respondent if required by statute, even though not designated in the petition. If two or more persons are entitled to petition the same court for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) Application for Enforcement of Order; Answer; Default; Cross-Application for Enforcement. An application for enforcement of an order of an agency shall be filed with the clerk of a court of appeals which is authorized to enforce the order. The application shall contain a concise statement of the proceedings in which the order was entered, the facts upon which venue is based, and the relief prayed. Within 20 days after the application is filed, the respondent shall serve on the petitioner and file with the clerk an answer to the application.

If the respondent fails to file an answer within such time, judgment will be awarded for the relief prayed. If a petition is filed for review of an order which the court has jurisdiction to enforce, the respondent may file a cross-application for enforcement.

(c) Service of Petition or Application. A copy of a petition for review or of an application or cross-application for enforcement of an order shall be served by the clerk of the court of appeals on each respondent in the manner prescribed by Rule 3(d), unless a different manner of service is prescribed by an applicable statute. At the time of filing, the petitioner shall furnish the clerk with a copy of the petition or application for each respondent. At or before the time of filing a petition for review, the petitioner shall serve a copy thereof on all parties who shall have been admitted to participate in the proceedings before the agency other than respondents to be served by the clerk, and shall file with the clerk a list of those so served.

(d) Intervention. Unless an applicable statute provides a different method of intervention, a person who desires to intervene in a proceeding under this rule shall serve upon all parties to the proceeding and file with the clerk of the court of appeals a motion for leave to intervene. The motion shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought. A motion for leave to intervene or other notice of intervention authorized by an applicable statute shall be filed within 30 days of the date on which the petition for review is filed.

(e) Payment of Fees. When filing any separate or joint petition for review in a court of appeals, the petitioner must pay the clerk of the court of appeals the fees established by statute, and also the docket fee prescribed by the Judicial Conference of the United States.

[Amended effective December 1, 1993.]

RULE 15.1. BRIEFS AND ORAL ARGUMENT IN NATIONAL LABOR RELATIONS BOARD PROCEEDINGS

Each party adverse to the National Labor Relations Board in an enforcement or a review proceeding shall proceed first on briefing and at oral argument unless the court orders otherwise.

[Adopted effective July 1, 1986.]

CIRCUIT RULE 15

PETITION TO REVIEW OR APPEAL FROM AGENCY ACTION; DOCKETING STATEMENT

(a) Service of Petition for Review. In carrying out the service obligations of FRAP 15(c), in cases involving informal agency rulemaking such as, for example, those conducted pursuant to 5 U.S.C. § 553, a petitioner or appellant need serve copies only on the respondent agency, and on the United States if required by statute *(see, e.g.*, 28 U.S.C. § 2344).

(b) Intervention. For purposes of FRAP 15(d), a motion to intervene in a case before this court regarding review of agency action must be served on all parties to the case before the court. A motion to intervene in a case before this court concerning direct review of an agency action shall be deemed to be a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, unless the moving party specifically states otherwise, and an order granting such motion shall have the effect of granting intervention in all such cases.

(c) **Docketing Statement.**

(1) *Timing*. As directed by the court, appellant or petitioner shall file an original and one copy of a docketing statement and shall serve a copy on all parties (including intervenors) and *amici curiae* appearing before this court at that time.

(2) *Docketing Statement Form.* The docketing statement shall be on a form furnished by the clerk's office and shall contain such information as the form prescribes. Absent good cause for an exception, incomplete docketing statements will be rejected.

(3) *Provisional Certificate*. Attached to the docketing statement shall be a provisional certificate prepared by appellant or petitioner setting forth the information required by Circuit Rule 28(a)(1).

(4) *Knowledge and Information.* The docketing statement and the provisional certificate shall be prepared on the basis of the knowledge and information reasonably available to appellant or petitioner at the time of filing.

(5) *Errors in Docketing Statement.* Any party or *amicus* shall bring any errors in the docketing statement or provisional certificate to the attention of the clerk by letter served on all parties and *amici* within 7 days of service of the docketing statement.

(6) *Statement by Respondent, Appellee, or Intervenor*. Within 7 days of service of the docketing statement or the granting of an intervention motion, a respondent, appellee, or intervenor shall file with the court any statement required by Circuit Rule 26.1.

CIRCUIT RULE 15.1

BRIEFS AND ORAL ARGUMENT IN NATIONAL LABOR RELATIONS BOARD AND FEDERAL LABOR RELATIONS AUTHORITY PROCEEDINGS

The provisions of FRAP 15.1 shall apply also to parties adverse to the Federal Labor Relations Authority in an enforcement or a review proceeding.

RULE 16. THE RECORD ON REVIEW OR ENFORCEMENT

(a) Composition of the Record. The order sought to be reviewed or enforced, the findings or report on which it is based, and the pleadings, evidence and proceedings before the agency shall constitute the record on review in proceedings to review or enforce the order of an agency.

(b) Omissions From or Misstatements in the Record. If anything material to any party is omitted from the record or is misstated therein, the parties may at any time supply the omission or correct the misstatement by stipulation, or the court may at any time direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be prepared and filed.

CIRCUIT RULE 16

THE RECORD ON REVIEW OR ENFORCEMENT

There is no corresponding Circuit Rule.

RULE 17. FILING OF THE RECORD

(a) Agency to File; Time for Filing; Notice of Filing. The agency shall file the record with the clerk of the court of appeals within 40 days after service upon it of the petition for review unless a different time is provided by the statute authorizing review. In enforcement proceedings the agency shall file the record within 40 days after filing an application for enforcement, but the record need not be filed unless the respondent has filed an answer contesting enforcement of the order, or unless the court otherwise orders. The court may shorten or extend the time above prescribed. The clerk shall give notice to all parties of the date on which the record is filed.

(b) Filing — What Constitutes. The agency may file the entire record or such parts thereof as the parties may designate by stipulation filed with the agency. The original papers in the agency proceeding or certified copies thereof may be filed. Instead of filing the record or designated parts thereof, the agency may file a certified list of all documents, transcripts of testimony, exhibits and other material comprising the record, or a list of such parts thereof as the parties may designate, adequately describing each, and the filing of the certified list shall constitute filing of the record. The parties may stipulate that neither the record nor a certified list be filed with the court. The stipulation shall be filed with the clerk of the court of appeals and the date of its filing shall be deemed the date on which the record is filed. If a certified list is filed, or if the parties designate only parts of the record for filing or stipulate that neither the record nor a certified list be filed, the agency shall retain the record or parts thereof. Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the agency shall be a part of the record on review for all purposes.

CIRCUIT RULE 17

FILING OF THE RECORD FOR REVIEW OR ENFORCEMENT OF AGENCY ORDER

(a) Immigration Case. On petition for review of an action of the Immigration and Naturalization Service, that agency shall transmit the record to this court within 40 days after the filing of the petition for review.

(b) Other Agency Case. On petition for review or on direct appeal of any other agency action, the agency shall transmit a certified list of the contents of the administrative record to the court within 40 days after the filing of the petition for review or direct appeal, and no other portion of the record shall be transmitted to this court unless the court so requests.

See also Circuit Rule 47.1 (Matters under Seal).

RULE 18. STAY PENDING REVIEW

Application for a stay of a decision or order of an agency pending direct review in the court of appeals shall ordinarily be made in the first instance to the agency. A motion for such relief may be made to the court of appeals or to a judge thereof, but the motion shall show that application to the agency for the relief sought is not practicable, or that application has been made to the agency and denied, with the reasons given by it for denial, or that the action of the agency did not afford the relief which the applicant had requested. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant to the relief sought. Reasonable notice of the motion shall be given to all parties to the proceeding in the court of appeals. The court may condition relief under this rule upon the filing of a bond or other appropriate security. The motion shall be filed with the clerk and normally will be considered by a panel or division of the court, but in exceptional cases where such procedure would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court.

CIRCUIT RULE 18

STAY AND EMERGENCY RELIEF PENDING REVIEW OF AGENCY ORDER

(a) Criteria; Service.

(1) A motion for a stay of an order of an agency or any other motion seeking emergency relief shall state whether such relief was previously requested from the agency and the ruling on that request. The motion shall state the reasons for granting the stay or other emergency relief sought and shall discuss, with specificity, each of the following factors: (i) the likelihood that the moving party will prevail on the merits; (ii) the prospect of irreparable injury to the moving

party if relief is withheld; (iii) the possibility of harm to other parties if relief is granted; and (iv) the public interest.

(2) Except in extraordinary circumstances, the motion shall be served by hand or, in the case of counsel located outside the greater Washington metropolitan area, by other form of expedited service. Counsel shall attempt to notify opposing counsel by telephone in advance of the filing of the motion and shall describe in the motion or accompanying memorandum the efforts made to so notify opposing counsel.

(3) There shall be attached to each copy of the motion a copy of the order involved, and of any pertinent rule, decision, memorandum, opinion, or findings issued by the agency.

(b) Dispositive Motion Combined with Motion for Stay or Opposition Thereto. A party filing or opposing a motion for a stay or other emergency relief may, in addition or in the alternative, file a motion to dispose of the petition for review or direct appeal in its entirety. When a response to a motion for a stay or other emergency relief is combined with a dispositive motion, the combined pleading shall be no longer than 30 pages. The response to such a combined pleading shall be no longer than 15 pages, and the final reply shall be no longer than 10 pages.

See also Circuit Rule 8 (Stay and Emergency Relief Pending Appeal from Judgment or Order of District Court), Circuit Rule 25 (Filing and Service), and Circuit Rule 27 (Motions and Petitions).

RULE 19. SETTLEMENT OF JUDGMENTS ENFORCING ORDERS

When an opinion of the court is filed directing the entry of a judgment enforcing in part the order of an agency, the agency shall within 14 days thereafter serve upon the respondent and file with the clerk a proposed judgment in conformity with the opinion. If the respondent objects to the proposed judgment as not in conformity with the opinion, the respondent shall within 7 days thereafter serve upon the agency and file with the clerk a proposed judgment which the respondent deems to be in conformity with the opinion. The court will thereupon settle the judgment and direct its entry without further hearing or argument.

[Amended effective July 1, 1986.]

CIRCUIT RULE 19

SETTLEMENT OF JUDGMENT ENFORCING AN ORDER

There is no corresponding Circuit Rule.

RULE 20. APPLICABILITY OF OTHER RULES TO REVIEW OR ENFORCEMENT OF AGENCY ORDERS

All provisions of these rules are applicable to review or enforcement of orders of agencies, except that Rules 3–14 and Rules 22 and 23 are not applicable. As used in any applicable rule, the term "appellant" includes a petitioner and the term "appellee" includes a respondent in proceedings to review or enforce agency orders.

CIRCUIT RULE 20

APPLICABILITY OF OTHER RULES TO REVIEW OR ENFORCEMENT OF AGENCY ORDERS

There is no corresponding Circuit Rule.

TITLE V. EXTRAORDINARY WRITS

RULE 21. WRITS OF MANDAMUS AND PROHIBITION, OTHER EXTRAORDINARY WRITS

(a) Mandamus or Prohibition to a Court: Petition, Filing, Service, and Docketing.

(1) A party petitioning for a writ of mandamus or prohibition directed to a court shall file a petition with the circuit clerk with proof of service on all parties to the proceeding in the trial court. The party shall also provide a copy to the trial court judge. All parties to the proceeding in the trial court other than the petitioner are respondents for all purposes.

(2)(A) The petition shall be titled "In re [name of petitioner]."

(B) The petition shall state:

(i) the relief sought;

(ii) the relief presented;

(iii) the facts necessary to understand the issues presented by the petition; and

(iv) the reasons why the writ should issue.

(C) The petition shall include copies of any order or opinion or parts of the record that may be essential to understand the matters set forth in the petition.

(3) When the clerk receives the prescribed docket fee, the clerk shall docket the petition and submit it to the court.

(b) Denial; Order Directing Answer; Briefs; Precedence.

(1) The court may deny the petition without an answer. Otherwise, it shall order the respondent, if any, to answer within a fixed time.

(2) The clerk shall serve the order to respond on all persons directed to respond.

(3) Two or more respondents may answer jointly.

(4) The court of appeals may invite or order the trial judge to respond or may invite an amicus curiae to do so. The trial court judge may request permission to respond but may not respond unless invited or ordered to do so by the court of appeals.

(5) If briefing or oral argument is required, the clerk shall advise the parties, and when appropriate, the trial court judge or *amicus curiae*.

(6) The proceeding shall be given preference over ordinary civil cases.

(7) The circuit clerk shall send a copy of the final disposition to the trial court judge.

(c) Other Extraordinary Writs. Application for an extraordinary writ other than one of those provided for in subdivisions (a) and (b) of this rule shall be made by filing a petition with the circuit clerk with proof of service on the respondents. Proceedings on such application shall conform, so far as is practicable, to the procedure prescribed in subdivisions (a) and (b) of this rule.

(d) Form of Papers; Number of Copies. All papers may be typewritten. An original and three copies shall be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

[Amended effective December 1, 1994; December 1, 1996.]

CIRCUIT RULE 21

WRITS OF MANDAMUS AND PROHIBITION AND OTHER EXTRAORDINARY WRITS AND COMPLAINTS OF UNREASONABLE DELAY

(a) A petition for a special writ to the district court or an administrative agency, including a petition seeking relief from unreasonable agency delay, shall be treated as a motion for purposes of these rules, except that no responsive pleading shall be permitted unless requested by the court. No such petition shall be granted in the absence of such a request.

(b) A petition for a writ of mandamus or a writ of prohibition to the district court shall not bear the name of the district judge, but shall be titled, "In re _____, Petitioner. "Unless otherwise ordered, the district judge shall be represented *pro forma* by counsel for the party opposing the relief, who shall appear in the name of such party and not that of the judge.

TITLE VI. HABEAS CORPUS; PROCEEDINGS *IN FORMA PAUPERIS*

RULE 22. HABEAS CORPUS PROCEEDINGS

(a) Application for the Original Writ. An application for a writ of habeas corpus shall be made to the appropriate district court. If application is made to a circuit judge, the application shall be transferred to the appropriate district court. If an application is made to or transferred to the district court and denied, renewal of the application before a circuit judge shall not be permitted. The applicant may, pursuant to section 2253 of title 28 of the United States Code, appeal to the appropriate court of appeals from the order of the district court denying the writ.

(b) Certificate of Appealability. In a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court, an appeal by the applicant for the writ may not proceed unless a district or a circuit judge issues a certificate of appealability pursuant to section 2253(c) of title 28, United States Code. If an appeal is taken by the applicant, the district judge who rendered the judgment shall either issue a certificate of appealability or state the reasons why such a certificate should not issue. The certificate or the statement shall be forwarded to the court of appeals with the notice of appeal and the file of the proceedings in the district court. If the district judge has denied the certificate, the applicant for the writ may then request issuance of the certificate by a circuit judge. If such a request is addressed to the court of appeals, it shall be deemed addressed to the judges thereof and shall be considered by a circuit judge or judges as the court deems appropriate. If no express request for a certificate is filed, the notice of appeal shall be deemed to constitute a request addressed to the judges of the court of appeals. If an appeal is taken by a State or its representative, a certificate of appealability is not required.

[Amended effective April 26, 1996.]

CIRCUIT RULE 22

HABEAS CORPUS PROCEEDING

See Circuit Rule 47.2 (Appeal Expedited by Statute; Habeas Corpus Proceeding).

RULE 23. CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS

(a) Transfer of Custody Pending Review. Pending review of a decision in a habeas corpus proceeding commenced before a court, justice or judge of the United States for the release of a prisoner, a person having custody of the prisoner shall not transfer custody to another unless such transfer is directed in accordance with the provisions of this rule. Upon application of a custodian showing a need therefor, the court, justice or judge rendering the decision may make an order authorizing transfer and providing for the substitution of the successor custodian as a party.

(b) Detention or Release of Prisoner Pending Review of Decision Failing to Release. Pending review of a decision failing or refusing to release a prisoner in such a proceeding, the prisoner may be detained in the custody from which release is sought, or in other appropriate custody, or may be enlarged upon the prisoner's recognizance, with or without surety, as may appear fitting to the court or justice or judge rendering the decision, or to the court of appeals or to the Supreme Court, or to a judge or justice of either court.

(c) Release of Prisoner Pending Review of Decision Ordering Release. Pending review of a decision ordering the release of a prisoner in such a proceeding, the prisoner shall be enlarged upon the prisoner's recognizance, with or without surety, unless the court or justice or judge rendering the decision, or the court of appeals or the Supreme Court, or a judge or justice of either court shall otherwise order.

(d) Modification of Initial Order Respecting Custody. An initial order respecting the custody or enlargement of the prisoner and any recognizance or surety taken, shall govern review in the court of appeals and in the Supreme Court unless for special reasons shown to the court of appeals or to the Supreme Court, or to a judge or justice of either court, the order shall be modified, or an independent order respecting custody, enlargement or surety shall be made.

[Amended effective July 1, 1986.]

CIRCUIT RULE 23

CUSTODY OF PRISONERS IN HABEAS CORPUS PROCEEDINGS

There is no corresponding Circuit Rule.

RULE 24. PROCEEDINGS *IN FORMA PAUPERIS*

(a) Leave to Proceed on Appeal *In Forma Pauperis* From District Court to Court of Appeals. A party to an action in a district court who desires to proceed on appeal *in forma pauperis* shall file in the district court a motion for leave so to proceed, together with an affidavit, showing, in the detail prescribed by Form 4 of the Appendix of Forms, the party's inability to pay fees and costs or to give security therefor, the party's belief that party is entitled to redress, and a statement of the issues which that party intends to present on appeal. If the motion is granted, the party may proceed without further application to the court of appeals and without prepayment of fees or costs in either court or the giving of security therefor. If the motion is denied, the district court shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the district court *in forma pauperis*, or who has been permitted to proceed there as one who is financially unable to obtain adequate defense in a criminal case, may proceed on appeal *in forma pauperis* without further authorization unless, before or after the notice of appeal is filed, the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the district court shall state in writing the reasons for such certification or finding.

If a motion for leave to proceed on appeal *in forma pauperis* is denied by the district court, or if the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled to proceed *in forma pauperis*, the clerk shall forthwith serve notice of such action. A motion for leave so to proceed may be filed in the court of appeals within 30 days after service of notice of the action of the district court. The motion shall be accompanied by a copy of the affidavit filed in the district court, or by the affidavit prescribed by the first paragraph of this subdivision if no affidavit has been filed in the district court, and by a copy of the statement of reasons given by the district court for its action.

(b) Leave to Proceed on Appeal or Review *In Forma Pauperis* in Administrative Agency Proceedings. A party to a proceeding before an administrative agency, board, commission or officer (including, for the purpose of this rule, the United States Tax Court) who desires to proceed on appeal or review in a court of appeals *in forma pauperis*, when such appeal or review may be had directly in a court of appeals, shall file in the court of appeals a motion for leave so to proceed, together with the affidavit prescribed by the first paragraph of (a) of this Rule 24.

(c) Form of Briefs, Appendices and Other Papers. Parties allowed to proceed *in forma pauperis* may file briefs, appendices and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.

[Amended effective August 1, 1979; July 1, 1986.]

CIRCUIT RULE 24

PROCEEDINGS *IN FORMA PAUPERIS*

(a) All appeals *in forma pauperis* shall be considered on the record without the necessity of an appendix. With the brief, appellant shall furnish the following items:

(1) The pages of the court reporter's transcript to be called to the attention of the court (any method of duplication may be used which produces a clear black image on white paper), and a list setting forth the page numbers of the transcripts so furnished.

(2) Other portions of the record to be presented for the court's consideration, which shall in every case include the findings of fact, conclusions of law, and opinion, if any, of the district court.

The appellant is required to submit one copy of the above-listed documents; however, appellants are encouraged to submit 4 copies of each if they are able to do so.

(b) With the brief, appellee shall furnish 4 copies of any pages of the transcript, or of other portions of the record, to be called to the court's attention and which were not furnished by appellant.

See also Circuit Rule 30 (Appendix to the Briefs) and Circuit Rule 31 (Number of Copies of a Brief).

TITLE VII. GENERAL PROVISIONS

RULE 25. FILING AND SERVICE

(a) Filing.

(1) Filing with the Clerk. A paper required or permitted to be filed in a court of appeals shall be filed with the clerk.

(2) Filing: Method and Timeliness.

(A) *In general*. Filing may be accomplished by mail addressed to the clerk, but filing is not timely unless the clerk receives the papers within the time fixed for filing.

(B) *A brief or appendix*. A brief or appendix is timely filed, however, if on or before the last day for filing, it is:

> (i) mailed to the clerk by First-Class Mail, or other class of mail that is at least as expeditious, postage prepaid; or
>
> (ii) dispatched to the clerk for delivery within 3 calendar days by a third-party commercial carrier.

(C) *Inmate filing*. A paper filed by an inmate confined in an institution is timely filed if deposited in the institution's internal mail system on or before the last day for filing. Timely filing of a paper by an inmate confined in an institution may be shown by a notarized statement or declaration (in compliance with 28 U.S.C. § 1746) setting forth the date of deposit and stating that first-class postage has been prepaid.

(D) *Electronic filing.* A court of appeals may by local rule permit papers to be filed, signed, or verified by electronic means that are consistent with technical standards, if any, that the Judicial Conference of the United States establishes. A paper filed by

electronic means in compliance with a local rule constitutes a written paper for the purpose of applying these rules.

(3) *Filing a Motion with a Judge*. If a motion requests relief that may be granted by a single judge, the judge may permit the motion to be filed with the judge; the judge shall note the filing date on the motion and give it to the clerk.

(4) *Clerk's Refusal of Documents*. The clerk shall not refuse to accept for filing any paper presented for that purpose solely because it is not presented in proper form as required by these rules or by any local rules or practices.

(b) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(c) Manner of Service. Service may be personal, by mail, or by third-party commercial carrier for delivery within 3 calendar days. When reasonable considering such factors as the immediacy of the relief sought, distance, and cost, service on a party shall be by a manner at least as expeditious as the manner used to file the paper with the court. Personal service includes delivery of the copy to a responsible person at the office of counsel. Service by mail or by commercial carrier is complete on mailing or delivery to the carrier.

(d) Proof of Service; Filing. A paper presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service, of the names of the persons served, and of the addresses to which the papers were mailed or at which they were delivered, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. When a brief or appendix is filed by mailing or dispatch in accordance with Rule 25(a)(2)(B), the proof of service shall also state the date and manner by which the document was mailed or dispatched to the clerk.

(e) Number of Copies. Whenever these rules require the filing or furnishing of a number of copies, a court may require a different number by local rule or by order in a particular case.

[Amended effective July 1, 1986; December 1, 1991; December 1, 1993; December 1, 1994; December 1, 1996.]

CIRCUIT RULE 25

FILING AND SERVICE

A non-emergency paper may be filed at the United States court house after the regular hours of the clerk's office pursuant to procedures established by the clerk's office. *(See also* Circuit Rule 27(f).) In emergencies or other compelling circumstances, the clerk may authorize that papers be filed with the court and served on counsel through facsimile transmission. Except when specifically so permitted, such filing and service are not authorized.

See also Circuit Rule 27(a)(1) and (f) (Motions and Petitions), and Circuit Rule 45(b) (Duties of Clerk, Office Hours).

RULE 26. COMPUTATION AND EXTENSION OF TIME

(a) Computation of Time. In computing any period of time prescribed or allowed by these rules, by an order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule "legal holiday" includes New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States. It shall also include a day appointed as a holiday by the state wherein the district court which rendered the judgment or order which is or may be appealed from is situated, or by the state wherein the principal office of the clerk of the court of appeals in which the appeal is pending is located.

(b) Enlargement of Time. The court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal, a petition for allowance, or a petition for permission to appeal. Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission or officer of the United States, except as specifically authorized by law.

(c) Additional Time After Service. When a party is required or permitted to act within a prescribed period after service of a paper

upon that party, 3 days are added to the prescribed period unless the paper is delivered on the date of service stated in the proof of service.

[Amended effective July 1, 1971; July 1, 1986; December 1, 1989; December 1, 1991; December 1, 1996.]

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Any non-governmental corporate party to a civil or bankruptcy case or agency review proceeding and any non-governmental corporate defendant in a criminal case must file a statement identifying all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public. The statement must be filed with a party's principal brief or upon filing a motion, response, petition, or answer in the court of appeals, whichever first occurs, unless a local rule requires earlier filing. Whenever the statement is filed before a party's principal brief, an original and three copies of the statement must be filed unless the court requires the filing of a different number by local rule or by order in a particular case. The statement must be included in front of the table of contents in a party's principal brief even if the statement was previously filed.

[Adopted effective December 1, 1989; amended effective December 1, 1991; December 1, 1994.]

CIRCUIT RULE 26

COMPUTATION AND EXTENSION OF TIME

For the purpose of computing response and reply periods, all filed papers will be presumed to have been served by mail unless the certificate of service clearly indicates that service was made by hand or other means authorized by Circuit Rule 25.

CIRCUIT RULE 26.1

DISCLOSURE STATEMENT

(a) A corporation, association, joint venture, partnership, syndicate, or other similar entity appearing as a party or *amicus* in any proceeding shall file a disclosure statement, at the time specified in FRAP 26.1, or as otherwise ordered by the court, identifying all parent companies, subsidiaries, and affiliates that have issued shares or debt securities to the public. For the purposes of this rule, "affiliate" shall be a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the specified entity; "parent" shall be an affiliate controlling such entity directly, or indirectly through intermediaries; and "subsidiary" shall be an affiliate controlled by such entity directly or indirectly through one or more intermediaries.

(b) The statement shall identify the represented entity's general nature and purpose, insofar as relevant to the litigation, and if the entity is unincorporated, the statement shall include the names of any members of the entity that have issued shares or debt securities to the public. No such listing need be made, however, of the names of members of a trade association or professional association. For purposes of this rule, a "trade association" is a continuing association of numerous organizations or individuals operated for the purpose of promoting the general commercial, professional, legislative, or other interests of the membership.

See also Circuit Rule 12(b) and (f) (Docketing Statement in Appeal from a Judgment or Order of District Court; Statement by Appellee or Intervenor), and Circuit Rule 15 (c)(3) and (6) (Docketing Statement in Appeal from or Petition to Review Agency Action).

RULE 27. MOTIONS

(a) Content of Motions; Response. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order [for which see subdivision (b)] within 7 days after service of the motion, but motions authorized by Rules 8, 9, 18 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion.

(b) Determination of Motions for Procedural Orders. Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response thereto, and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may by application to the court request consideration, vacation or modification of such action.

(c) Power of a Single Judge to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single judge of a court of appeals may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise determine an appeal or other proceeding, and except that a court of appeals may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single judge may be reviewed by the court.

(d) Form of Papers; Number of Copies. All papers relating to a motion may be typewritten. An original and three copies must be filed unless the court requires the filing of a different number by local rule or by order in a particular case.

[Amended effective August 1, 1979; December 1, 1989; December 1, 1994.]

CIRCUIT RULE 27

MOTIONS AND PETITIONS

(a) Form of Pleadings.

(1) *In Writing; Service*. Except where otherwise specifically provided by the FRAP or by these rules, and except for motions made in open court when opposing counsel is present, every motion or petition shall be in writing and signed by counsel of record or by the movant if not represented by counsel, with proof of service on all other parties to the proceeding before this court.

(2) *Page Limits*. Except by permission or direction of this court, motions, responses thereto, or petitions for special writs and responses thereto if ordered, shall not exceed 20 pages, and a reply to a response shall not exceed 10 pages.

(3) *Format*. Motions and petitions, responses thereto, and replies to responses shall be prepared in conformity with FRAP 32. Motions and their supporting memoranda may be combined into a single document.

(4) *References to Oral Argument and Submissions Without Argument.* If a case has been scheduled for oral argument, has already been argued, or has been submitted without oral argument, a motion or petition, and any response or reply, shall so state in capital letters at the top of the first page and, where applicable, shall include the date of argument.

(b) Number of Copies. Unless the court otherwise directs, the original and 4 copies of every motion, petition, response, and reply shall be filed with the clerk.

(c) Response. When a party opposing a motion or petition also seeks affirmative relief, that party shall submit with the response a motion so stating. The response and motion for affirmative relief may be included within the same pleading; the caption of that pleading, however, shall denote clearly that the response includes the motion. Such a combined motion and response shall be limited to 30 pages, the response to such a combined filing shall be limited to 20 pages, and the final reply for such a combined filing shall be limited to 10 pages.

(d) Reply to Response. Any reply to a response to a motion or petition, unless the court enlarges or shortens the time, must be filed within 3 days after service of the response, except when the response includes a motion for affirmative relief; in the latter case, the reply may be joined in the same pleading with a response to the motion for affirmative relief and that pleading may be filed within 7 days of service of the motion for affirmative relief. The caption of this pleading shall denote clearly that both the reply to the response and the response to the affirmative motion are included in that pleading. A reply shall not reargue propositions presented in the motion or petition, or present matters that are not strictly in reply to the response. After a party files a reply, no further pleading pertaining to the motion or petition may be filed by that party except upon leave of the court.

(e) Clerk May Dispose of Certain Motions.

(1) *Procedural Motions.* The clerk may dispose of unopposed procedural motions, in accordance with the court's instructions. Instead of granting or denying a motion under the authority afforded by this subparagraph, the clerk may submit it to a panel or to an individual judge of the court.

(2) *Reconsideration of Clerk's Orders*. Any interested party adversely affected by an order of the clerk disposing of a motion may move for reconsideration thereof within 10 days after entry of the order. The clerk shall submit the motion for reconsideration to a panel or an individual judge of the court.

(f) Requests for Expeditious Consideration. Any party may request expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would ordinarily be required for this court to receive and consider a response. The motion on which expedited action is sought shall be labeled an "Emergency Motion" and the request for expedition shall state the nature of the emergency and the date by which court action is necessary. The motion must be filed at least 7 days before the date by which court action is necessary or counsel must explain why it was not so filed. Counsel for the party seeking expedition shall communicate the request and the reasons therefor in person or by telephone to the clerk's office and to opposing counsel.

(g) Dispositive Motions.

(1) *Timing*. Any motion which, if granted, would dispose of the appeal or petition for review in its entirety, or transfer the case to another court, shall be filed within 45 days of the docketing of the case in this court, unless, for good cause shown, the court grants leave for a later filing. This requirement does not apply to a motion by an appellant to dismiss its own appeal, or by a petitioner to dismiss its own petition either of which may be filed at any time.

(2) *Required Attachments*. There shall be attached to each copy of a dispositive motion a copy of the judgment or order involved, and of any pertinent decision, memorandum, opinion, or findings issued by the district court or agency. If the reasons were given orally, the pertinent extract from the reporter's transcript shall be attached, if available.

(3) *Deferral of Briefing Pending Resolution of Dispositive Motion.* Unless otherwise ordered by the court, briefing, if scheduled,

will be deferred pending resolution of any dispositive motion filed within 45 days of docketing of the case in this court. If such a motion is filed more than 45 days after the docketing of the case in this court, briefing shall be deferred only if ordered by the court.

(4) *Response to an Untimely Motion*. When a substantive motion is filed along with a motion for leave to file out of time or to exceed the length limitations, no response is required to the substantive motion until a decision is rendered on the motion to file out of time or to exceed length limitations.

(h) Motions to Extend Time for Filing and to Exceed Page Limits.

(1) *Timeliness of Request*. A motion to extend the time for filing motions or petitions, or to exceed the page limits for such pleadings, shall be filed at least 10 days before the due date of such pleadings. A motion to extend the time for filing a response to a motion, or to exceed the page limits for such pleading, shall be filed at least 3 days before the due date of such pleading. A motion to extend the time for filing a reply to a response to a motion, or to exceed the page limits for such pleading, shall be filed at least 2 days before the due date of such pleading.

(2) *Consultation with Counsel*. Before filing a motion to extend the time for filing a pleading or for leave to exceed page limits, counsel for the moving party must attempt to obtain the consent of other counsel. If consent is not obtained, counsel for the moving party must attempt to inquire whether an opposition or other form of response will be filed. In the opening paragraph of any such motion, counsel must recite the position taken by other counsel in response to these inquiries, or the efforts made to obtain responses.

If other counsel have stated an intention to file an opposition or other response, or have not been reached after reasonable effort, counsel for the moving party shall serve the motion by personal service or, if personal service is not feasible, by giving other counsel telephone notice of the filing and serving the motion by the most

expeditious form of mail delivery or overnight delivery service. If counsel is unable to effect personal service or telephone notice at the time of filing, the opening paragraph of the motion shall recite the efforts made to do so. Any opposition or response to the motion must be filed within 3 days after personal service or telephone notice.

(3) *Pleadings in Excess of Page Limits*. The court disfavors motions to exceed page limits; such motions will be granted only for extraordinarily compelling reasons.

(4) *Automatic Extensions for Timely Filed Motions*. If a motion is filed in accordance with the requirements of subpara- graphs (1) and (2) above and the court does not act on the motion by the end of the second business day before the filing deadline, the time for filing the pleading is automatically extended until the court rules on the motion. If the motion is denied by the court under these circumstances, the time for filing will be extended automatically for the following periods after the date of the order denying the motion: for responsive pleadings that must be filed within 3 days of the pleadings to which they respond, 4 days; and for all other pleadings, 6 days. If a timely filed motion to exceed length limitations is not acted upon by the filing date for the document, the overlong document may be filed; if the motion is subsequently denied, the movant will be given a short period in which to file a document that conforms to the rules. This rule does not apply to filing of briefs. *See* Circuit Rule 28.

See also Circuit Rule 25 (Filing and Service), and Circuit Rule 47.1 (Matters Under Seal).

RULE 28. BRIEFS

(a) Appellant's Brief. The brief of the appellant must contain, under appropriate headings and in the order here indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of subject matter and appellate jurisdiction. The statement shall include: (i) a statement of the basis for subject matter jurisdiction in the district court or agency, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction; (ii) a statement of the basis for jurisdiction in the court of appeals, with citation to applicable statutory provisions and with reference to the relevant facts to establish such jurisdiction; the statement shall include relevant filing dates establishing the timeliness of the appeal or petition for review and (a) shall state that the appeal is from a final order or a final judgment that disposes of all claims with respect to all parties or, if not, (b) shall include information establishing that the court of appeals has jurisdiction on some other basis.

(3) A statement of the issues presented for review.

(4) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record (see subdivision (e)).

(5) A summary of argument. The summary should contain a succinct, clear, and accurate statement of the arguments made in the body of the brief. It should not be a mere repetition of the argument headings.

(6) An argument. The argument must contain the contentions of the appellant on the issues presented, and the reasons therefor, with

citations to the authorities, statutes and parts of the record relied on. The argument must also include for each issue a concise statement of the applicable standard of review; this statement may appear in the discussion of each issue or under a separate heading placed before the discussion of the issues.

(7) A short conclusion stating the precise relief sought.

(b) Appellee's Brief. The brief of the appellee must conform to the requirements of paragraphs (a)(1)–(6), except that none of the following need appear unless the appellee is dissatisfied with the statement of the appellant:

(1) the jurisdictional statement;

(2) the statement of the issues;

(3) the statement of the case;

(4) the statement of the standard of review.

(c) Reply Brief. The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross appeal. No further briefs may be filed except with leave of court. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes and other authorities cited, with references to the pages of the reply brief where they are cited.

(d) References in Briefs to Parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee". It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," "the ship," "the stevedore," etc.

(e) References in Briefs to the Record. References in the briefs to parts of the record reproduced in the appendix filed with the brief of the appellant (see Rule 30(a)) shall be to the pages of the appendix at which those parts appear. If the appendix is prepared after the briefs are filed, references in the briefs to the record shall be made by one of the methods allowed by Rule 30(c). If the record is reproduced in accordance with the provisions of Rule 30(f), or if references are made in the briefs to parts of the record not reproduced, the references shall be to the pages of the parts of the record involved; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the appendix or of the transcript at which the evidence was identified, offered, and received or rejected.

(f) Reproduction of Statutes, Rules, Regulations, etc. If determination of the issues presented requires the study of statutes, rules, regulations, etc. or relevant parts thereof, they shall be reproduced in the brief or in an addendum at the end, or they may be supplied to the court in pamphlet form.

(g) Length of Briefs. Except by permission of the court, or as specified by local rule of the court of appeals, principal briefs must not exceed 50 pages, and reply briefs must not exceed 25 pages, exclusive of pages containing the corporate disclosure statement, table of contents, tables of citations, proof of service, and any addendum containing statutes, rules, regulations, etc.

(h) Briefs in Cases Involving Cross Appeals. If a cross appeal is filed, the party who first files a notice of appeal, or in the event that the notices are filed on the same day, the plaintiff in the proceeding below shall be deemed the appellant for the purposes of this rule and Rules 30 and 31, unless the parties otherwise agree or the court otherwise orders. The brief of the appellee shall conform to the requirements of subdivision (a)(1)–(6) of this rule with respect to the appellee's cross appeal as well as respond to the brief of the appellant

except that a statement of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(i) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(j) Citation of Supplemental Authorities. When pertinent and significant authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

[Amended effective August 1, 1979; July 1, 1986; December 1, 1989; December 1, 1991; December 1, 1993; December 1, 1994.]

CIRCUIT RULE 28

BRIEFS

(a) Contents of Briefs: Additional Requirements. Briefs for an appellant/petitioner and an appellee/respondent, and briefs for an intervenor and an *amicus curiae* to the extent indicated herein, shall contain the following in addition to the items required by FRAP 28:

> (1) *Certificate*. Immediately inside the cover and preceding the table of contents, a certificate titled "Certificate as to Parties, Rulings, and Related Cases," which shall contain a separate paragraph or paragraphs, with the appropriate heading, corresponding to, and in the same order as, each of the subparagraphs below.

(A) *Parties and Amici*. The appellant or petitioner shall furnish a list of all parties, intervenors and *amici* who have appeared before the district court or agency (except in cases involving direct review of informal rulemaking conducted pursuant to 5 U.S.C. § 553), and all persons who are parties, intervenors or *amici* in this court. An appellee or respondent, intervenor or *amicus* may omit from its certificate those persons who were listed by the appellant or petitioner, but shall state: "[Except for the following,] all parties, intervenors and *amici* appearing [before the district court or agency and] in this court are listed in the Briefs for _____."

Any party or *amicus* which is a corporation, association, joint venture, partnership, syndicate, or other similar entity shall make the disclosure required by Circuit Rule 26.1.

(B) *Rulings Under Review*. Appropriate references shall be made to each ruling at issue in this court, including the date, the name of the district court judge (if any), the place in the appendix where the ruling can be found, and any official citation in the case of a district court or Tax Court opinion, the Federal Register citation and/or other citation in the case of an agency decision, or a statement that no such citation exists. Such references need not be included if they are contained in a brief previously filed by another person, but the certificate shall state: "[Except for the following,] references to the rulings at issue appear in the Brief for _____."

(C) *Related Cases*. A statement indicating whether the case on review was previously before this court or any other court and, if so, the name and number of such prior case. The statement shall also contain similar information for any other related cases currently pending in this court or in any other court of which counsel is aware. For purposes of this rule, the phrase "any other court" means any other United States court of appeals or any other

court (whether federal or local) in the District of Columbia. The phrase "any other related cases" means any case involving substantially the same parties and the same or similar issues. If there are no related cases, the certificate shall so state.

(2) *Principal Authorities.* In the left-hand margin of the table of authorities in all briefs, there shall be placed an asterisk to indicate those authorities on which the brief principally relies, together with a notation at the bottom of the first page of the table stating: "Authorities upon which we chiefly rely are marked with asterisks." If there are no such authorities, the notation should so state.

(3) *Glossary*. All briefs containing abbreviations, including acronyms, shall provide a "Glossary" defining each such abbreviation on a page immediately following the table of authorities. Abbreviations that are part of common usage need not be defined.

(4) *Jurisdiction*. The brief of the appellant or petitioner shall set forth the jurisdictional statement required by FRAP 28(a)(2). Any party, intervenor, or *amicus* may include in its brief a counter statement regarding jurisdiction.

(5) *Statutes and Regulations*. Pertinent statutes and regulations shall be set forth either in the body of the brief following the statement of the issues presented for review or in an addendum introduced by a table of contents and bound with the brief or separately; in the latter case a statement shall appear in the body of the brief referencing the addendum. If the statutes and regulations are included in an addendum bound with the brief, the addendum shall be separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. If the pertinent statutes and regulations are contained in a brief previously submitted by another party, they need not be repeated but, if they are not repeated, a statement shall appear under this heading as follows: "[Except for the following,] all applicable statutes, etc., are contained in the Brief for _____."

(6) *Summary of Argument*. In each brief, including a reply brief, a summary of argument shall immediately precede the argument; the summary of argument shall contain a succinct, clear statement of the arguments made in the body of the brief but shall not merely repeat the argument headings.

(7) *Reference to Oral Argument and Submission Without Oral Argument.* If a case has been scheduled for oral argument, has already been argued, or has been submitted without oral argument, a brief shall so state in capital letters at the top of the first page and, where applicable, shall include the date of the argument.

(b) Citation to Published Opinion and to Statute. Citations to decisions of this court shall be to the Federal Reporter. Dual or parallel citation of cases is not required. Citations of state court decisions included in the National Reporter System shall be to that system in both the text and the table of authorities. Citations to all federal statutes, including those statutes applicable to the District of Columbia, shall refer to the current official code or its supplement, or if there is no current official code, to a current unofficial code or its supplement. Citation to the official session laws is not required unless there is no code citation.

(c) Citation to Unpublished Disposition. Unpublished orders or judgments of this court, including explanatory memoranda and sealed opinions, are not to be cited as precedent. The same rule applies to unpublished dispositions of district courts, and to unpublished dispositions of other courts of appeals if those appellate courts have a rule similar to this one. Counsel may refer to an unpublished disposition, however, when the binding or preclusive effect of the disposition, rather than its quality as precedent, is relevant. In that event, counsel shall include in an appropriately labeled addendum to the brief a copy of each unpublished disposition cited therein. The addendum may be bound together with the brief, but separated from the body of the brief (and from any other addendum) by a distinctly colored separation page. If the addendum is bound separately, it shall be filed and served concurrently with, and in the same number of copies as, the brief itself.

(d) Length of Briefs.

(1) *Briefs Prepared by Word Processing Systems or Using Standard Typographic Printing*. Briefs prepared by word processing systems or using standard typographic printing may be printed in any typeface at least 11 points in height. Such briefs may include no more than the following numbers of words: principal briefs, 12,500 words; reply briefs, 6,250 words; briefs for intervenors or *amici curiae*, 8,750 words; reply briefs for intervenors, 4,400 words. In calculating the number of words for purposes of this rule, parties may exclude the cover, the certificate required by Circuit Rule 28(a)(1), the table of contents, the table of authorities, the glossary, the certificate of service, and any addenda containing statutes or regulations, etc. Footnotes and citations are to be included in this word count. Parties filing briefs shall submit along with the brief, on the same page as the certificate of service, a certification, signed by the counsel of record or, in the case of parties filing briefs *pro se*, by the party, that the brief contains no more than the number of words allowed by this rule. For purposes of this certification, parties may rely on word counts reported by word processing systems provided that footnotes and citations are included in such word counts.

(2) *Briefs Prepared by Typewriters or Word Processing Systems That Do Not Count Words*. Briefs prepared by typewriters or word processing systems that do not count words must be printed in a non-proportional typeface with no more than 10 characters per inch. The permissible page lengths for such briefs are: principal briefs, 50 pages; reply briefs, 25 pages; briefs for intervenors or *amici curiae*, 35 pages; reply briefs for intervenors, 17 pages. These page limits are exclusive of the cover, the certificate required by Circuit Rule 28(a)(1), the table of contents, the table of authorities, the glossary, the certificate of service, and any addenda containing statutes or regulations, etc. Counsel are cautioned against evasion of the specified page limits by employing extended single spaced passages or by excessive use of footnotes. If single spaced passages or footnotes are used in this manner, the court may reject or require prompt recomposition of the brief.

(e) Briefs for Intervenors. The rules stated below shall apply with respect to the brief for an intervenor in this court. For purposes of this rule, an intervenor is an interested person who has sought and obtained the court's leave to participate in an already instituted proceeding.

(1) Except by permission or direction of the court, the brief shall conform to the brief lengths set out above.

(2) The brief shall avoid repetition of facts or legal arguments made in the principal (appellant/petitioner or appellee/respondent) brief, and shall focus on points not made or adequately elaborated upon in the principal brief, although relevant to the issues before this court.

(3) Except as otherwise directed by the court, the brief shall be filed in accordance with the time limitations described in FRAP 29.

(4) Intervenors on the same side shall join in a single brief to the extent practicable. This requirement shall not apply to a governmental entity. (For this purpose, the term "governmental entity" includes the United States or an officer or agency thereof, the District of Columbia, or a State, Territory, or Commonwealth of the United States.) Any separate brief for an intervenor shall contain a certificate of counsel plainly stating why the separate brief is necessary. Generally unacceptable grounds for the filing of separate briefs include representations that the issues presented require greater length than these Rules allow (appropriately addressed by a motion to exceed length limits), that counsel cannot coordinate their efforts due to geographical dispersion, or that separate presentations were allowed in earlier proceedings.

(5) A reply brief may be filed for an intervenor on the side of appellant or petitioner at the time the appellant's or petitioner's reply brief is due.

(f) Request to Exceed the Limits on the Length of Briefs and for Extension of Time for Filing.

(1) The court disfavors motions to exceed limits on the length of briefs, and motions to extend the time for filing briefs; such motions will be granted only for extraordinarily compelling reasons.

(2) A motion to exceed the limits on length of briefs or to extend the filing time for a brief must be filed at least 10 days before the main briefs are due to be filed, and at least 5 days before a reply brief is due to be filed.

(3) Before filing a motion to exceed the limits on length of briefs, or to extend the time for filing, counsel for the moving party must attempt to obtain the consent of other counsel. If consent is not obtained, counsel for the moving party must attempt to inquire whether an opposition or other form of response will be filed. In the opening paragraph of any such motion, counsel shall recite the position taken by other counsel in response to these inquiries, or the efforts made to obtain responses.

If other counsel have stated an intention to file an opposition or other response, or have not been reached after reasonable effort, counsel for the moving party shall serve the motion by hand or, if such service is not feasible, by giving other counsel telephone notice of the filing and serving the motion by the most expeditious form of mail delivery or overnight delivery service. If counsel is unable to effect service by hand or telephone notice at the time of filing, the opening paragraph of the motion shall recite the efforts made to do so. Any opposition or response to the motion must be filed within 5 days after service by hand or telephone notice.

(4) Submission of a motion to exceed the limits on length of briefs or extend the filing time for a brief will not toll the time for compliance with filing requirements. Movants will be expected to meet all filing requirements in the absence of an order granting a waiver.

(g) Supplemental Brief. After briefing has been completed, a party may file an original and 4 copies of a letter pursuant to FRAP 28(j), or a supplemental brief. A letter pursuant to FRAP 28(j) may not include argument; a supplemental brief may cite and discuss only authorities issued since the filing of the party's last brief. Any supplemental brief must be received by the parties and this court no later than 7 days before argument, unless otherwise ordered by the court for good cause shown. The cover of a supplemental brief shall be yellow and shall contain the following statement in capital letters: "ORAL ARGUMENT SCHEDULED FOR _____."

(h) Briefs in a Cross Appeal. When, pursuant to FRAP 28(h), the parties agree that a party other than the first one to file a notice of appeal shall be deemed the appellant for purposes of this rule, they shall so notify the court. In a civil case, this notice shall be given at the time the docketing statement is filed. In a criminal case, the parties shall so notify the court at the time of the filing of the final transcript status report.

See also Circuit Rule 29 (Brief for an *Amicus Curiae*), and Circuit Rule 47.1 (Matters under Seal).

RULE 29. BRIEF OF AN *AMICUS CURIAE*

A brief of an *amicus curiae* may be filed only if accompanied by written consent of all parties, or by leave of court granted on motion or at the request of the court, except that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an *amicus curiae* is desirable. Save as all parties otherwise consent, any *amicus curiae* shall file its brief within the time allowed the party whose position as to affirmance or reversal the *amicus* brief will support unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. A motion of an *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.

CIRCUIT RULE 29

BRIEF OF AN *AMICUS CURIAE*

The rules stated below shall apply with respect to the brief for *amicus curiae* not appointed by the court. A brief for an *amicus curiae* shall be governed by the provisions of Circuit Rule 28, as appropriate.

(a) Contents of Brief. The brief shall avoid repetition of facts or legal arguments made in the principal (appellant/petitioner or appellee/respondent) brief, and shall focus on points not made or adequately elaborated upon in the principal brief, although relevant to the issues before this court.

(b) Leave to File. Any individual or non-governmental entity seeking leave to participate as *amicus curiae* shall, within 30 days of the docketing of the case in this court, file either a written representation that all parties consent to such participation, or, in the absence of such consent, a motion for leave to participate as *amicus*

curiae. (For this purpose, the term "governmental entity" includes the United States or an officer or agency thereof, the District of Columbia, or a State, Territory, or Commonwealth of the United States.) The court may extend this time on a showing of good cause. A governmental entity planning to participate as *amicus curiae* shall, within the same 30 days, or as promptly thereafter as possible, submit a notice of intent to file an *amicus* brief.

(c) Timely Filing. Generally, a brief for *amicus curiae* will be due as set by the briefing order in each case. In the absence of provision for such a brief in the order, the brief shall be filed in accordance with the time limitations described in FRAP 29.

(d) Single Brief. *Amici curiae* on the same side shall join in a single brief to the extent practicable. This requirement shall not apply to a governmental entity. Any separate brief for an *amicus curiae* shall contain a certificate of counsel plainly stating why the separate brief is necessary. Generally unacceptable grounds for the filing of separate briefs include representations that the issues presented require greater length than these Rules allow (appropriately addressed by a motion to exceed length limits), that counsel cannot coordinate their efforts due to geographical dispersion, or that separate presentations were allowed in earlier proceedings.

(e) No Reply Brief. Unless otherwise directed by the court, no reply brief of an *amicus curiae* will be received.

See Circuit Rules 28(f) (Briefs for Intervenors), and 34(e) (Participation in Oral Argument by *Amici Curiae*).

RULE 30. APPENDIX TO THE BRIEFS

(a) Duty of Appellant to Prepare and File; Content of Appendix; Time for Filing; Number of Copies. The appellant must prepare and file an appendix to the briefs which must contain: (1) the relevant docket entries in the proceeding below; (2) any relevant portions of the pleadings, charge, findings or opinion; (3) the judgment, order, or decision in question; and (4) any other parts of the record to which the parties wish to direct the particular attention of the court. Except where they have independent relevance, memoranda of law in the district court should not be included in the appendix. The fact that parts of the record are not included in the appendix shall not prevent the parties or the court from relying on such parts.

Unless filing is to be deferred pursuant to the provisions of subdivision (c) of this rule, the appellant must serve and file the appendix with the brief. Ten copies of the appendix must be filed with the clerk, and one copy must be served on counsel for each party separately represented, unless the court requires the filing or service of a different number by local rule or by order in a particular case.

(b) Determination of Contents of Appendix; Cost of Producing. The parties are encouraged to agree as to the contents of the appendix. In the absence of agreement, the appellant shall, not later than 10 days after the date on which the record is filed, serve on the appellee a designation of the parts of the record which the appellant intends to include in the appendix and a statement of the issues which the appellant intends to present for review. If the appellee deems it necessary to direct the particular attention of the court to parts of the record not designated by the appellant, the appellee shall, within 10 days after receipt of the designation, serve upon the appellant a designation of those parts. The appellant shall include in the appendix the parts thus designated with respect to the appeal and any cross appeal. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference and examination and shall not engage in unnecessary designation. The

provisions of this paragraph shall apply to cross appellants and cross appellees.

Unless the parties otherwise agree, the cost of producing the appendix shall initially be paid by the appellant, but if the appellant considers that parts of the record designated by the appellee for inclusion are unnecessary for the determination of the issues presented the appellant may so advise the appellee and the appellee shall advance the cost of including such parts. The cost of producing the appendix shall be taxed as costs in the case, but if either party shall cause matters to be included in the appendix unnecessarily the court may impose the cost of producing such parts on the party. Each circuit shall provide by local rule for the imposition of sanctions against attorneys who unreasonably and vexatiously increase the costs of litigation through the inclusion of unnecessary material in the appendix.

(c) Alternative Method of Designating Contents of the Appendix; How References to the Record May Be Made in the Briefs When Alternative Method Is Used. If the court shall so provide by rule for classes of cases or by order in specific cases, preparation of the appendix may be deferred until after the briefs have been filed, and the appendix may be filed 21 days after service of the brief of the appellee. If the preparation and filing of the appendix is thus deferred, the provisions of subdivision (b) of this Rule 30 shall apply, except that the designations referred to therein shall be made by each party at the time each brief is served, and a statement of the issues presented shall be unnecessary.

If the deferred appendix authorized by this subdivision is employed, references in the briefs to the record may be to the pages of the parts of the record involved, in which event the original paging of each part of the record shall be indicated in the appendix by placing in brackets the number of each page at the place in the appendix where that page begins. Or if a party desires to refer in a brief directly to pages of the appendix, that party may serve and file typewritten or page proof copies of the brief within the time required by Rule 31(a), with appropriate references to the pages of the parts of the record

involved. In that event, within 14 days after the appendix is filed the party shall serve and file copies of the brief in the form prescribed by Rule 32(a) containing references to the pages of the appendix in place of or in addition to the initial references to the pages of the parts of the record involved. No other changes may be made in the brief as initially served and filed, except that typographical errors may be corrected.

(d) Arrangement of the Appendix. At the beginning of the appendix there shall be inserted a list of the parts of the record which it contains, in the order in which the parts are set out therein, with references to the pages of the appendix at which each part begins. The relevant docket entries shall be set out following the list of contents. Thereafter, other parts of the record shall be set out in chronological order. When matter contained in the reporter's transcript of proceedings is set out in the appendix, the page of the transcript at which such matter may be found shall be indicated in brackets immediately before the matter which is set out. Omissions in the text of papers or of the transcript must be indicated by asterisks. Immaterial formal matters (captions, subscriptions, acknowledgments, etc.) shall be omitted. A question and its answer may be contained in a single paragraph.

(e) Reproduction of Exhibits. Exhibits designated for inclusion in the appendix may be contained in a separate volume, or volumes, suitably indexed. Four copies thereof shall be filed with the appendix and one copy shall be served on counsel for each party separately represented. The transcript of a proceeding before an administrative agency, board, commission or officer used in an action in the district court shall be regarded as an exhibit for the purpose of this subdivision.

(f) Hearing of Appeals on the Original Record Without the Necessity of an Appendix. A court of appeals may by rule applicable to all cases, or to classes of cases, or by order in specific cases, dispense with the requirement of an appendix and permit appeals to be heard on the original record, with such copies of the record, or relevant parts thereof, as the court may require.

[Amended effective July 1, 1970; July 1, 1986; December 1, 1991; December 1, 1994.]

CIRCUIT RULE 30

APPENDIX TO THE BRIEFS

(a) Filing and Form. Except as provided in Circuit Rules 9 or 24, an appendix shall be prepared as prescribed by FRAP 30. At the time the brief for appellant or petitioner is filed, unless filing is to be deferred pursuant to FRAP 30(c), appellant or petitioner shall also file 10 copies of the appendix with the court, and shall serve one copy on counsel for each separately represented party. The appendix shall be reproduced on white paper by any duplicating or copying process capable of producing a clear black image; such duplication may be made on both sides of each page.

(b) Unnecessary Record Items Not to Be Included. Counsel shall not burden the appendix with material of excessive length or items that do not bear directly on the issues raised on appeal. Costs shall not be awarded for unnecessary reproduction of items such as discovery materials, memoranda, pretrial briefs, or interlocutory motions or rulings that lack direct relevance to the appeal; appropriate sanctions will be imposed, after notice and opportunity to respond, if the court finds counsel to have been unreasonable in including such material. Any portion of the record, whether or not included in an appendix, may be relied upon by the parties and by the court.

(c) Deferred Appendix Option. If all parties consent, they may utilize the deferred appendix option described at FRAP 30(c).

(d) Motion to Dispense With Appendix. For good cause shown, appellant or petitioner may be excused from the requirement of producing an appendix or any part thereof.

(e) Matter Inadvertently Omitted May Be Added. If anything material to the appeal or petition is inadvertently omitted from the

appendix, the clerk, on the duly served and filed written request of any party, may allow the appendix to be supplemented.

See also Circuit Rule 47.1 (Matters under Seal).

RULE 31. FILING AND SERVICE OF BRIEFS

(a) Time for Serving and Filing Briefs. The appellant shall serve and file a brief within 40 days after the date on which the record is filed. The appellee shall serve and file a brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the appellee, but, except for good cause shown, a reply brief must be filed at least 3 days before argument. If a court of appeals is prepared to consider cases on the merits promptly after briefs are filed, and its practice is to do so, it may shorten the periods prescribed above for serving and filing briefs, either by rule for all cases or for classes of cases, or by order for specific cases.

(b) Number of Copies to Be Filed and Served. Twenty-five copies of each brief must be filed with the clerk, and two copies must be served on counsel for each party separately represented unless the court requires the filing or service of a different number by local rule or by order in a particular case. If a party is allowed to file typewritten ribbon and carbon copies of the brief, the original and three legible copies must be filed with the clerk, and one copy must be served on counsel for each party separately represented.

(c) Consequence of Failure to File Briefs. If an appellant fails to file a brief within the time provided by this rule, or within the time as extended, an appellee may move for dismissal of the appeal. If an appellee fails to file a brief, the appellee will not be heard at oral argument except by permission of the court.

[Amended effective July 1, 1970; July 1, 1986; December 1, 1994.]

CIRCUIT RULE 31

NUMBER OF COPIES OF A BRIEF

Except for persons proceeding *in forma pauperis*, 15 copies of every brief shall be filed. When the deferred appendix method is used, only 7 copies of the initial briefs shall be filed, followed by 15 in final

form. A person proceeding *in forma pauperis* shall file with the clerk one original brief, and the clerk shall duplicate the necessary copies. (*See also* FRAP 24.)

See also Circuit Rule 47.1(d)(1) (Matters under Seal).

RULE 32. FORM OF BRIEFS, THE APPENDIX AND OTHER PAPERS

(a) Form of Briefs and the Appendix. Briefs and appendices may be produced by standard typographic printing or by any duplicating or copying process which produces a clear black image on white paper. Carbon copies of briefs and appendices may not be submitted without permission of the court, except in behalf of parties allowed to proceed *in forma pauperis*. All printed matter must appear in at least 11 point type on opaque, unglazed paper. Briefs and appendices produced by the standard typographic process shall be bound in volumes having pages 6 1/8 by 9 1/4 inches and type matter 4 1/6 by 7 1/6 inches. Those produced by any other process shall be bound in volumes having pages not exceeding 8 ½ by 11 inches and type matter not exceeding 6 ½ by 9 ½ inches, with double spacing between each line of text. In patent cases the pages of briefs and appendices may be of such size as is necessary to utilize copies of patent documents. Copies of the reporter's transcript and other papers reproduced in a manner authorized by this rule may be inserted in the appendix; such pages may be informally renumbered if necessary.

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are available, the cover of the brief of the appellant should be blue; that of the appellee, red; that of an intervenor or amicus curiae, green; that of any reply brief, gray. The cover of the appendix, if separately printed, should be white. The front covers of the briefs and of appendices, if separately printed, shall contain: (1) the name of the court and the number of the case; (2) the title of the case (see Rule 12(a)); (3) the nature of the proceeding in the court (e.g., Appeal; Petition for Review) and the name of the court, agency or board below; (4) the title of the document (e.g., Brief for Appellant, Appendix); and (5) the names and addresses of counsel representing the party on whose behalf the document is filed.

(b) Form of Other Papers. Petitions for rehearing shall be produced in a manner prescribed by subdivision (a). Motions and other papers may be produced in like manner, or they may be

typewritten upon opaque, unglazed paper 8 ½ by 11 inches in size. Lines of typewritten text shall be double spaced. Consecutive sheets shall be attached at the left margin. Carbon copies may be used for filing and service if they are legible.

A motion or other paper addressed to the court shall contain a caption setting forth the name of the court, the title of the case, the file number, and a brief descriptive title indicating the purpose of the paper.

CIRCUIT RULE 32

FORM OF A BRIEF, AN APPENDIX, AND OTHER PAPERS

(a) Form of Briefs. All briefs, except those produced by standard typographical printing, shall be double spaced and printed on one side of the page only.

(b) Nonconforming Papers May Be Returned. Absent good cause for an excuse, the clerk may return for correction any submissions that do not conform substantially to the requirements of the FRAP or these Rules.

(c) Pleading by Letter. Except as prescribed by FRAP 21(b) and 28(j), the clerk shall not accept any pleading by letter except from a *pro se* litigant proceeding *in forma pauperis*.

See also Circuit Rule 28 (Briefs).

RULE 33. APPEAL CONFERENCES

The court may direct the attorneys, and in appropriate cases the parties, to participate in one or more conferences to address any matter that may aid in the disposition of the proceedings, including the simplification of the issues and the possibility of settlement. A conference may be conducted in person or by telephone and be presided over by a judge or other person designated by the court for that purpose. Before a settlement conference, attorneys must consult with their clients and obtain as much authority as feasible to settle the case. As a result of a conference, the court may enter an order controlling the course of the proceedings or implementing any settlement agreement.

[Amended effective December 1, 1994.]

CIRCUIT RULE 33

APPEAL CONFERENCES

There is no corresponding Circuit Rule.

RULE 34. ORAL ARGUMENT

(a) In General; Local Rule. Oral argument shall be allowed in all cases unless pursuant to local rule a panel of three judges, after examination of the briefs and record, shall be unanimously of the opinion that oral argument is not needed. Any such local rule shall provide any party with an opportunity to file a statement setting forth the reasons why oral argument should be heard. A general statement of the criteria employed in the administration of such local rule shall be published in or with the rule and such criteria shall conform substantially to the following minimum standard:

> Oral Argument will be allowed unless:
>
> > (1) the appeal is frivolous; or
> >
> > (2) the dispositive issue or set of issues has been recently authoritatively decided; or
> >
> > (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) Notice of Argument; Postponement. The clerk shall advise all parties whether oral argument is to be heard, and if so, of the time and place therefor, and the time to be allowed each side. A request for postponement of the argument or for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for hearing.

(c) Order and Content of Argument. The appellant is entitled to open and conclude the argument. Counsel shall not read at length from briefs, records, or authorities.

(d) Cross and Separate Appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a cross appeal, the party who first files a notice of appeal, or in the event that the notices are

filed on the same day the plaintiff in the proceeding below, shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument.

(e) Non-Appearance of Parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case will be decided on the briefs unless the court shall otherwise order.

(f) Submission on Briefs. By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

(g) Use of Physical Exhibits at Argument; Removal. If physical exhibits other than documents are to be used at the argument, counsel shall arrange to have them placed in the court room before the court convenes on the date of the argument. After the argument counsel shall cause the exhibits to be removed from the court room unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

[Amended effective August 1, 1979; July 1, 1986; December 1, 1991; December 1, 1993.]

CIRCUIT RULE 34

ORAL ARGUMENT

(a) Substance and Style of Oral Argument. Oral argument should undertake to emphasize and clarify the written argument appearing in the briefs. This court will not entertain any oral argument that is read from a prepared text.

(b) Time Allowed for Argument. Counsel shall be afforded such time for oral argument as the court may provide and will be so advised by order. Requests for enlargement of time may be made by motion filed reasonably in advance of the date fixed for the argument.

(c) Notice by Counsel. No less than 5 days before the date of scheduled argument, the court must be notified of the names of counsel who will argue. Not more than 2 counsel shall be heard for each side except by leave of the court, granted on motion for good cause shown. Such requests are not favored. In cases in which 15 minutes or less per side is allotted for argument, only one counsel shall be heard for each side except by leave of the court, granted on motion for good cause shown.

(d) Apportionment of Time Among Parties. In the absence of an order of this court, and subject to the provision as to number of counsel stated in paragraph (c), counsel for the parties on each side of a case, including counsel for any intervenor, may agree on the apportionment of the time allotted. In the event of a failure to agree, the court will allocate the time upon motion duly filed and served. Unless otherwise ordered, counsel for an intervenor will be permitted to argue only to the extent that counsel for the party whose side the intervenor supports is willing to share allotted time.

(e) Participation in Oral Argument By *Amici Curiae*. An *amicus curiae*, other than one appointed by the court, will not be permitted to participate in the oral argument without leave of the court granted for extraordinary reasons on motion, except that counsel for the party supported by *amicus curiae* may consent to such participation subject to the provision as to number of counsel stated in paragraph (c) above. A motion by *amicus curiae* seeking leave to participate in oral argument shall be filed at least 14 days prior to the date oral argument is scheduled.

(f) Failure to File Brief. A party who fails to file a brief shall not be heard at the time of oral argument except by permission of the court.

(g) Continuance of Oral Argument. When a case has been set for oral argument, it may not be continued by stipulation of the parties, but only by order of the court upon a motion evidencing extraordinary cause for a continuance.

(h) Consolidation. Where 2 or more cases are consolidated under FRAP 3(b) or for other reason by this court, the consolidated cases shall be considered as one case for the purpose of this rule unless the court otherwise directs.

(i) Exhibits and Handouts. If counsel intends to use exhibits during argument or to hand out prepared materials, notice of this intent shall be provided to the court and all other counsel presenting argument by letter received not less than 5 days before the date of the argument. The letter shall set forth justification for the use of the exhibits or handouts.

(j) Disposition Without Oral Argument.

(1) *Procedure*. Whenever the court, on its own motion, or on the motion of a party or stipulation of the parties, concludes that oral argument is not needed, the court may, after causing notice of that determination to be given to the parties by the clerk, proceed to dispose of the case without oral argument.

(2) *Grounds*. Except upon a stipulation to dispense with oral argument, a case may be decided without oral argument only if a 3-judge panel of the court unanimously concludes that: (A) the appeal is frivolous; (B) the dispositive issue or issues have been authoritatively decided; or (C) the facts and legal arguments are adequately presented in the briefs, pleadings, and record, and oral argument would not significantly aid the court.

(3) *Reconsideration*. Motions for reconsideration of a decision to dispose of a case without oral argument may be made within 10 days of the date of the order advising counsel of this court's determination that the case is to be decided without oral argument. Such motions are disfavored.

RULE 35. DETERMINATION OF CAUSES BY THE COURT *EN BANK*

(a) When Hearing or Rehearing *En Bank* **Will Be Ordered.** A majority of the circuit judges who are in regular active service may order that an appeal or other proceeding be heard or reheard by the court of appeals *en banc*. Such a hearing or rehearing is not favored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) Suggestion of a Party for Hearing or Rehearing *En Bank***.** A party may suggest the appropriateness of a hearing or rehearing *en bank*. No response shall be filed unless the court shall so order. The clerk shall transmit any such suggestion to the members of the panel and the judges of the court who are in regular active service but a vote need not be taken to determine whether the cause shall be heard or reheard *en bank* unless a judge in regular active service or a judge who was a member of the panel that rendered a decision sought to be reheard requests a vote on such a suggestion made by a party.

(c) Time for Suggestion of a Party for Hearing or Rehearing *En Bank***; Suggestion Does Not Stay Mandate.** If a party desires to suggest that an appeal be heard initially *en bank*, the suggestion must be made by the date on which the appellee's brief is filed. A suggestion for a rehearing *en bank* must be made within the time prescribed by Rule 40 for filing a petition for rehearing, whether the suggestion is made in such petition or otherwise. The pendency of such a suggestion whether or not included in a petition for rehearing shall not affect the finality of the judgment of the court of appeals or stay the issuance of the mandate.

(d) Number of Copies. The number of copies that must be filed may be prescribed by local rule and may be altered by order in a

particular case.

[Amended effective August 1, 1979; December 1, 1994.]

CIRCUIT RULE 35

PETITION FOR REHEARING AND SUGGESTION FOR HEARING OR REHEARING *EN BANK*

(a) Time Within Which to File. A petition for rehearing or a suggestion for rehearing *en banc*, in a case in which neither the United States nor an agency or officer thereof is a party, shall be filed within 30 days after entry of judgment or other form of decision. In all cases in which the United States or an agency or officer thereof is a party, the time within which any party may seek rehearing or suggest rehearing *en banc* shall be 45 days after entry of judgment or other form of decision. The time for filing a petition for rehearing or a suggestion of the appropriateness of a rehearing *en banc* will not be extended except for good cause shown.

(b) Number of Copies and Length. An original and 4 copies of petitions for rehearing, and an original and 19 copies of suggestions for hearing or rehearing *en banc* shall be filed. Such petitions and suggestions may be combined in one pleading or filed as separate documents. Whether filed as one pleading or as separate documents, a petition and/or suggestion shall not exceed a cumulative length of 15 pages, and shall otherwise conform to the requirements for a motion specified in Circuit Rule 27. This court disfavors motions to exceed page limits and such motions will be granted only for extraordinarily compelling reasons.

(c) Contents of Suggestion for *En Banc* Consideration. A suggestion for hearing or rehearing *en banc* shall contain a separate introductory section, captioned "Concise Statement of Issue and Its Importance," that shall set forth the reasons why the case is of exceptional importance or, where applicable, with what decision or decisions of the Supreme Court of the United States, of this court, or of any other federal appellate court, the panel decision is claimed to

be in conflict. Without such a statement, the suggestion will not be accepted for filing.

(d) Panel Opinion to be Attached. A copy of the opinion of the panel from which rehearing is being sought shall be attached as an addendum to the petition.

(e) Nature of Petition. Any pleading requesting rehearing *en banc*, no matter how styled, shall be deemed to include both a petition for rehearing by the panel that decided the case and a suggestion for rehearing *en banc*. A petition for rehearing only will not be treated as a suggestion for rehearing *en banc*.

(f) Disposition of Petition. A petition for rehearing ordinarily will not be granted, nor will an opinion or judgment be modified in any significant respect in response to a petition for rehearing, in the absence of a request by the court for a response to the petition.

A petition for rehearing will not be acted upon until action is ready to be taken on any timely suggestion for rehearing *en banc*. If rehearing *en banc* is granted, the petition for rehearing of the panel decision may be acted upon without awaiting final termination of the *en banc* proceeding, but the judgment of the panel shall be vacated and a new judgment shall be issued upon termination of the *en banc* proceeding. If the *en banc* court divides evenly, a new judgment affirming the decision under review will be issued.

(g) Filing Copies of Brief. When a suggestion for rehearing is granted, the court will issue an appropriate order if further briefing is needed or if more copies of the original briefs are required.

(h) Brief for an *Amicus Curiae*. No *amicus curiae* brief in response to or in support of a suggestion for rehearing *en banc* will be received by the clerk except by invitation of the court.

RULE 36. ENTRY OF JUDGMENT

The notation of a judgment in the docket constitutes entry of the judgment. The clerk shall prepare, sign and enter the judgment following receipt of the opinion of the court unless the opinion directs settlement of the form of the judgment, in which event the clerk shall prepare, sign and enter the judgment following final settlement by the court. If a judgment is rendered without an opinion, the clerk shall prepare, sign and enter the judgment following instruction from the court. The clerk shall, on the date judgment is entered, mail to all parties a copy of the opinion, if any, or of the judgment if no opinion was written, and notice of the date of entry of the judgment.

CIRCUIT RULE 36

DECISIONS OF THE COURT; OPINIONS AND ABBREVIATED DISPOSITIONS

(a) Opinions of the Court.

(1) *Policy.* It is the policy of this court to publish opinions and explanatory memoranda that have general public interest.

(2) *Published Opinions*. An opinion, memorandum, or other statement explaining the basis for the court's action in issuing an order or judgment shall be published if it meets one or more of the following criteria:

> (A) with regard to a substantial issue it resolves, it is a case of first impression or the first case to present the issue in this court;
>
> (B) it alters, modifies, or significantly clarifies a rule of law previously announced by the court;
>
> (C) it calls attention to an existing rule of law that appears to have been generally overlooked;

(D) it criticizes or questions existing law;

(E) it resolves an apparent conflict in decisions within the circuit or creates a conflict with another circuit;

(F) it reverses a published agency or district court decision, or affirms a decision of the district court upon grounds different from those set forth in the district court's published opinion;

(G) it warrants publication in light of other factors that give it general public interest.

All published opinions of the court, prior to issuance, shall be circulated to all judges on the court; they shall be printed prior to release, unless otherwise ordered, and shall be rendered by being filed with the clerk.

(b) Abbreviated Dispositions. The court may, while according full consideration to the issues, dispense with published opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate, e.g., affirmance by order of a decision or judgment of a court or administrative agency, a judgment of affirmance or reversal, containing a notation of precedents, or accompanied by a brief memorandum. If the parties have agreed to such disposition, they may so state in their briefs or may so stipulate at any time prior to decision. In any such case the court will promptly issue a judgment unless compelling reasons otherwise dictate.

(c) Unpublished Opinions. An opinion, memorandum or other statement explaining the basis for this court's action in issuing an order or judgment under subsection (b) above, which does not satisfy any of the criteria for publication set out in subsection (a) above, shall nonetheless be circulated prior to issuance to all judges on the court. A copy of each such unpublished opinion, memorandum, or statement shall be retained as part of the case file in the clerk's office and shall

be publicly available there on the same basis as any published opinion.

(d) Motion to Publish. Any person may, by motion made within 30 days after judgment or, if a timely motion for rehearing is made, within 30 days after action thereon, request that an unpublished opinion be published. Motions filed out of time shall not be considered unless good cause is shown. Motions for publication shall be based upon one or more of the criteria listed in subsection (a). Such motions are not favored and will be granted only for compelling reasons.

RULE 37. INTEREST ON JUDGMENTS

Unless otherwise provided by law, if a judgment for money in a civil case is affirmed, whatever interest is allowed by law shall be payable from the date the judgment was entered in the district court. If a judgment is modified or reversed with a direction that a judgment for money be entered in the district court, the mandate shall contain instructions with respect to allowance of interest.

CIRCUIT RULE 37

INTEREST ON JUDGMENTS

There is no corresponding Circuit Rule.

RULE 38. DAMAGES AND COSTS FOR FRIVOLOUS APPEALS

If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee.

[Amended effective December 1, 1994.]

CIRCUIT RULE 38

SANCTIONS FOR FAILURE TO COMPLY WITH RULES

When any party to a proceeding before this court or any attorney practicing before the court fails to comply with the FRAP or these Rules, or takes an appeal or files a petition or motion that is frivolous or interposed for an improper purpose, such as to harass or to cause unnecessary delay, the court may, on its own motion, or on motion of a party, impose appropriate sanctions on the offending party, the attorney or both. Sanctions include dismissal for failure to prosecute; imposition of costs, expenses, and attorneys' fees; and disciplinary proceedings. (*See* 28 U.S.C. §§ 1912, 1927.)

RULE 39. COSTS

(a) To Whom Allowed. Except as otherwise provided by law, if an appeal is dismissed, costs shall be taxed against the appellant unless otherwise agreed by the parties or ordered by the court; if a judgment is affirmed, costs shall be taxed against the appellant unless otherwise ordered; if a judgment is reversed, costs shall be taxed against the appellee unless otherwise ordered; if a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court.

(b) Costs For and Against the United States. In cases involving the United States or an agency or officer thereof, if an award of costs against the United States is authorized by law, costs shall be awarded in accordance with the provisions of subdivision (a); otherwise, costs shall not be awarded for or against the United States.

(c) Costs of Briefs, Appendices, and Copies of Records. By local rule the court of appeals shall fix the maximum rate at which the cost of printing or otherwise producing necessary copies of briefs, appendices, and copies of records authorized by Rule 30(f) shall be taxable. Such rate shall not be higher than that generally charged for such work in the area where the clerk's office is located and shall encourage the use of economical methods of printing and copying.

(d) Bill of Costs; Objections; Costs to be Inserted in Mandate or Added Later. A party who desires such costs to be taxed shall state them in an itemized and verified bill of costs which the party shall file with the clerk, with proof of service, within 14 days after the entry of judgment. Objections to the bill of costs must be filed within 10 days of service on the party against whom costs are to be taxed unless the time is extended by the court. The clerk shall prepare and certify an itemized statement of costs taxed in the court of appeals for insertion in the mandate, but the issuance of the mandate shall not be delayed for taxation of costs and if the mandate has been issued before final determination of costs, the statement, or any amendment thereof, shall be added to the mandate upon request by the clerk of the court of appeals to the clerk of the district court.

(e) Costs on Appeal Taxable in the District Courts. Costs incurred in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal, and the fee for filing the notice of appeal shall be taxed in the district court as costs of the appeal in favor of the party entitled to costs under this rule.

[Amended effective August 1, 1979; July 1, 1986.]

CIRCUIT RULE 39

COSTS

(a) Allowable Items. Costs will be allowed for the docketing fee and for the cost of reproducing the number of copies of briefs and appendices to be filed with the court or served on parties, intervenors and *amici curiae*, plus 3 copies for the prevailing party. The costs of reproducing the required copies of briefs and appendices will be taxed at actual cost or at a rate periodically set by the clerk to reflect the per page cost for the most economical means of reproduction available in the metropolitan Washington area, whichever is less. Charges incurred for covers and fasteners may also be claimed, at actual cost not to exceed a rate similarly determined by the clerk. The rates set by the clerk will be published by posting in the clerk's office, publication in *The Daily Washington Law Reporter*, and distribution to the subscribers to the court's opinions.

(b) Procedure for Requesting Taxation of Costs. Forms furnished by the clerk's office, or facsimiles thereof, must be used in requesting taxation of costs. Bills of costs in which costs are not itemized as required by the clerk, or which are not presented on clerk's office forms or reasonable facsimiles thereof, will not be accepted for filing.

(c) No Costs Taxed for Briefs for *Amici* or Intervenors. There shall be no taxation of costs for briefs for intervenors or *amici curiae* or separate replies thereto unless allowed by the court on motion.

(d) Costs of Producing Separate Briefs and Appendices Where Record is Sealed. The costs under Circuit Rule 47.1 of preparing 2 sets of briefs, and/or 2 segments of appendices, may be assessed if such costs are otherwise allowable.

RULE 40. PETITION FOR REHEARING

(a) Time for Filing; Content; Answer; Action by Court if Granted. A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule. However, in all civil cases in which the United States or an agency or officer thereof is a party, the time within which any party may seek rehearing shall be 45 days after entry of judgment unless the time is shortened or enlarged by order. The petition must state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and must contain such argument in support of the petition as the petitioner desires to present. Oral argument in support of the petition will not be permitted. No answer to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request. If a petition for rehearing is granted the court may make a final disposition of the cause without reargument or may restore it to the calendar for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length. The petition shall be in a form prescribed by Rule 32(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs. Except by permission of the court, or as specified by local rule of the court of appeals, a petition for rehearing shall not exceed 15 pages.

[Amended effective August 1, 1979; December 1, 1994.]

CIRCUIT RULE 40

PETITION FOR REHEARING

See Circuit Rule 35.

RULE 41. ISSUANCE OF MANDATE; STAY OF MANDATE

(a) Date of Issuance. The mandate of the court must issue 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. A certified copy of the judgment and a copy of the opinion of the court, if any, and any direction as to costs shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. If the petition is denied, the mandate must issue 7 days after entry of the order denying the petition unless the time is shortened or enlarged by order.

(b) Stay of Mandate Pending Petition for Certiorari. A party who files a motion requesting a stay of mandate pending petition to the Supreme Court for a writ of certiorari must file, at the same time, proof of service on all other parties. The motion must show that a petition for certiorari would present a substantial question and that there is good cause for a stay. The stay cannot exceed 30 days unless the period is extended for cause shown or unless during the period of the stay, a notice from the clerk of the Supreme Court is filed showing that the party who has obtained the stay has filed a petition for the writ in which case the stay will continue until final disposition by the Supreme Court. The court of appeals must issue the mandate immediately when a copy of a Supreme Court order denying the petition for writ of certiorari is filed. The court may require a bond or other security as a condition to the grant or continuance of a stay of the mandate.

[Amended effective December 1, 1994.]

ISSUANCE OF MANDATE; STAY OF MANDATE; REMAND

(a) Mandate.

(1) *Time for Issuance*. While retaining discretion to direct immediate issuance of its mandate in an appropriate case, the court ordinarily will include as part of its disposition an instruction that the clerk will withhold issuance of the mandate until the expiration of the time for filing a petition for rehearing or a suggestion for rehearing *en banc* and, if such petition or suggestion is timely filed, until 7 days after disposition thereof. Such an instruction is without prejudice to the right of any party at any time to move for expedited issuance of the mandate for good cause shown.

(2) *Stay of Mandate*. A motion for a stay of the issuance of mandate shall not be granted unless the motion sets forth facts showing good cause for the relief sought. If a motion to stay issuance of the mandate is denied, the mandate ordinarily will issue 7 days thereafter. If the motion is granted, the stay ordinarily will not extend beyond 30 days from the date that the mandate otherwise would have issued. If a timely motion to stay issuance of the mandate has been filed, the mandate shall not issue while the motion is pending. If a party obtains a stay of issuance of the mandate, that party shall inform the clerk of this court whether a petition for a writ of certiorari has been filed with the Supreme Court within the period of the stay.

The clerk may grant an unopposed motion to stay issuance of the mandate for a period not longer than 30 days from the date that the mandate otherwise would have been issued. No motion to stay issuance of the mandate shall be granted by the clerk until after the response time has passed, unless the moving party represents in the motion that all other parties either consent to the stay or do not object thereto. The clerk may submit any motion governed by this subparagraph to the panel of the court that decided the case.

(3) *Writs.* No mandate shall issue in connection with an order granting or denying a writ of mandamus or other special writ but the

order or judgment granting or denying the relief sought shall become effective automatically 21 days after issuance in the absence of an order or other special direction of this court to the contrary.

(4) *Mandate Recall if Rehearing En Banc Granted*. When rehearing *en banc* is granted, the court will recall the mandate if it has been issued.

(b) Remand. If the record in any case is remanded to the district court or to an agency, this court retains jurisdiction over the case. If the case is remanded, this court does not retain jurisdiction, and a new notice of appeal or petition for review will be necessary if a party seeks review of the proceedings conducted on remand.

RULE 42. VOLUNTARY DISMISSAL

(a) Dismissal in the District Court. If an appeal has not been docketed, the appeal may be dismissed by the district court upon the filing in that court of a stipulation for dismissal signed by all the parties, or upon motion and notice by the appellant.

(b) Dismissal in the Court of Appeals. If the parties to an appeal or other proceeding shall sign and file with the clerk of the court of appeals an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as may be agreed upon by the parties or fixed by the court.

CIRCUIT RULE 42

VOLUNTARY DISMISSAL

See Circuit Rule 27(g) (Motions and Petitions (Dispositive Motions)).

RULE 43. SUBSTITUTION OF PARTIES

(a) Death of a Party. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the court of appeals, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the court of appeals. The motion of a party shall be served upon the representative in accordance with the provisions of Rule 25. If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the court of appeals may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the district court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision. If a party entitled to appeal shall die before filing a notice of appeal, the notice of appeal may be filed by that party's personal representative, or, if there is no personal representative by that party's attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the court of appeals in accordance with this subdivision.

(b) Substitution for Other Causes. If substitution of a party in the court of appeals is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in subdivision (a).

(c) Public Officers; Death or Separation From Office.

(1) When a public officer is a party to an appeal or other proceeding in the court of appeals in an official capacity and during its pendency dies, resigns or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of

substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in an official capacity that public officer may be described as a party by the public officer's official title rather than by name; but the court may require the public officer's name to be added.

[Amended effective July 1, 1986.]

CIRCUIT RULE 43

SUBSTITUTION OF PARTIES

There is no corresponding Circuit Rule.

RULE 44. CASES INVOLVING CONSTITUTIONAL QUESTIONS WHERE UNITED STATES IS NOT A PARTY

It shall be the duty of a party who draws in question the constitutionality of any Act of Congress in any proceeding in a court of appeals to which the United States, or any agency thereof, or any officer or employee thereof, as such officer or employee, is not a party, upon the filing of the record, or as soon thereafter as the question is raised in the court of appeals, to give immediate notice in writing to the court of the existence of said question. The clerk shall thereupon certify such fact to the Attorney General.

CIRCUIT RULE 44

CASE INVOLVING CONSTITUTIONAL QUESTION WHERE UNITED STATES IS NOT A PARTY

There is no corresponding Circuit Rule.

RULE 45. DUTIES OF CLERKS

(a) General Provisions. The clerk of a court of appeals shall take the oath and give the bond required by law. Neither the clerk nor any deputy clerk shall practice as an attorney or counselor in any court while continuing in office. The court of appeals shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The office of the clerk with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but a court may provide by local rule or order that the office of its clerk shall be open for specified hours on Saturdays or on particular legal holidays other than New Years Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(b) The Docket; Calendar; Other Records Required. The clerk shall maintain a docket in such form as may be prescribed by the Director of the Administrative Office of the United States Courts. The clerk shall enter a record of all papers filed with the clerk and all process, orders and judgments. An index of cases contained in the docket shall be maintained as prescribed by the Director of the Administrative Office of the United States Courts.

The clerk shall prepare, under the direction of the court, a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk shall give preference to appeals in criminal cases and to appeals and other proceedings entitled to preference by law.

The clerk shall keep such other books and records as may be required from time to time by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States, or as may be required by the court.

(c) Notice of Orders or Judgments. Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion

respecting the order or judgment, and shall make a note in the docket of the mailing. Service on a party represented by counsel shall be made on counsel.

(d) Custody of Records and Papers. The clerk shall have custody of the records and papers of the court. The clerk shall not permit any original record or paper to be taken from the clerk's custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and appendices and other printed papers filed.

[Amended effective July 1, 1971; July 1, 1986.]

CIRCUIT RULE 45

DUTIES OF CLERK; FEES FOR SERVICES

(a) Shall Attend Sessions. The clerk or a deputy of the clerk shall attend in person the sessions of this court.

(b) Office Hours. The clerk's office shall be open for the transaction of business from 9:00 A.M. until 4:00 P.M. daily, except Saturdays, Sundays and legal holidays, and the court shall be deemed always open for the receipt of emergency papers and the transaction of emergency business.

(c) Fees for Services. Fees, as prescribed by the Judicial Conference of the United States, are to be charged for the following services performed by the clerk, except that no fees are to be charged for services rendered on behalf of the United States. The schedule of currently applicable fees shall be distributed periodically as an appendix to these rules.

(1) Docketing a case or docketing any other proceeding. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district

court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b) unless the appeal is allowed.

(2) Search of the records of this court and certifying the results.

(3) Certifying any document or paper, whether certification is made directly on the document or by separate instrument.

(4) Reproducing any record or paper.

(5) Comparing with the original thereof any copy of any transcript of record, entry, or paper, when such copy is furnished by any person requesting certification.

(d) Printed Copies of Opinions. For each printed copy of the decision in a case, including all separate and dissenting opinions, the clerk shall charge such sum as the court may from time to time direct. Separate charges shall be established for annual subscriptions to the court's opinions, and copies may be supplied without charge or at reduced charge as the court may from time to time designate. Each party of record in a case shall receive 2 copies of the decision without charge.

(e) Other Fees Not Authorized. No fees for services other than those authorized pursuant to law shall be charged.

See also Circuit Rule 1(c) (Scope of Rules; General Provisions), and Circuit Rule 25 (Filing and Service).

RULE 46. ATTORNEYS

(a) Admission to the Bar of a Court of Appeals; Eligibility; Procedure for Admission. An attorney who has been admitted to practice before the Supreme Court of the United States, or the highest court of a state, or another United States court of appeals, or a United States district court (including the district courts for the Canal Zone, Guam and the Virgin Islands), and who is of good moral and professional character, is eligible for admission to the bar of a court of appeals.

An applicant shall file with the clerk of the court of appeals, on a form approved by the court and furnished by the clerk, an application for admission containing the applicant's personal statement showing eligibility for membership. At the foot of the application the applicant shall take and subscribe to the following oath or affirmation:

> I, _____, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.

Thereafter, upon written or oral motion of a member of the bar of the court, the court will act upon the application. An applicant may be admitted by oral motion in open court, but it is not necessary that the applicant appear before the court for the purpose of being admitted, unless the court shall otherwise order. An applicant shall upon admission pay to the clerk the fee prescribed by rule or order of the court.

(b) Suspension or Disbarment. When it is shown to the court that any member of its bar has been suspended or disbarred from practice in any other court of record, or has been guilty of conduct unbecoming a member of the bar of the court, the member will be subject to suspension or disbarment by the court. The member shall be afforded an opportunity to show good cause, within such time as the court shall prescribe, why the member should not be suspended or disbarred. Upon the member's response to the rule to show cause, and

after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(c) Disciplinary Power of the Court Over Attorneys. A court of appeals may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the court.

[Amended effective July 1, 1986.]

CIRCUIT RULE 46

ATTORNEYS; APPEARANCE BY LAW STUDENT

(a) Appearances. Except as otherwise provided by law, the docketing statement and all papers filed thereafter in this court shall be signed by at least one member of the bar of this court, and only members of the bar of this court may present oral argument. However, on motion for good cause shown, the court may allow argument to be presented in a case by an attorney who is not a member of the bar of this court.

(b) Admission. Each applicant for admission to the bar of this court shall file with the clerk an application for admission on a form approved by the court and furnished by the clerk and shall append an original certificate, executed not more than 60 days prior to the date of the application, from the court upon which the application is based, evidencing the applicant's admission to practice before that court and current good standing. Upon the court's grant of an application for admission, the clerk shall mail to the applicant a certificate of admission. Applicants for admission to the bar of this court do not appear in person for the purpose of taking the oath or affirmation of admission. The fee for admission shall be set periodically by order of the court and shall be tendered with the application.

(c) Change of Address. Changes in the address of counsel and *pro se* litigants must be immediately reported to the clerk in writing.

(d) Change of Name of Attorney After Admission. Any member of the bar of this court may file with the clerk a certificate that he or she is engaged in practice under a new name. The clerk shall note such change of name on the roll of attorneys and on the records of this court.

(e) Disbarment and Suspension. For provisions governing the discipline of members of the bar of this court, see the court's Rules of Disciplinary Enforcement.

(f) Committee on Admissions and Grievances. For provisions governing the Committee on Admissions and Grievances and the referral of matters to that committee, see the court's Rules of Disciplinary Enforcement.

(g) Appearance by Law Student.

(1) *Entry of Appearance on Written Consent of Party*. An eligible law student may enter an appearance in this court on behalf of any party including the United States or a governmental agency, provided that the party on whose behalf the student appears has consented thereto in writing, and that a supervising lawyer has also indicated in writing approval of that appearance. In each case, the written consent and approval shall be filed with the clerk.

(2) *Appearance on Briefs and Participation in Oral Argument*. A law student who has entered an appearance in a case pursuant to paragraph (1) may appear on the brief, provided the supervising attorney also appears on the brief, may participate in oral argument, provided the supervising attorney is present in court, and may take part in other activities in connection with the case, subject to the direction of the supervising attorney.

(3) *Eligibility*. In order to be eligible to make an appearance pursuant to this rule, the law student must:

(A) Be duly enrolled in a law school accredited by the American Bar Association.

(B) Have completed legal studies amounting to at least 4 semesters, or the equivalent if the school is on some basis other than a semester basis.

(C) Be enrolled in or have passed a clinical program of an accredited law school for credit, held under the direction of a faculty member of such law school, in which a law student obtains practical experience by participating in cases and matters pending before the courts.

(D) Be certified by the dean of the law school as being of good character and competent legal ability, and as being adequately trained to perform as a legal intern.

(4) *Students Not to Be Compensated by Parties*. A law student appearing pursuant to this rule may neither ask for nor receive any compensation or remuneration of any kind for services from any party on whose behalf the services are rendered; this rule shall not prevent a lawyer, legal aid bureau, law school, public defender agency, or the government from paying compensation to the eligible law student, nor shall it prevent any agency from making such charges for its services as may otherwise be proper.

(5) *Withdrawal or Termination of Certification.* The certification of a student by the law school dean shall be filed with the clerk of this court and, unless it is sooner withdrawn, shall remain in effect for 18 months, or until the announcement of the results of the first bar examination following the student's graduation, whichever is earlier. For any student who passes that examination, or who is admitted to the bar without taking an examination, the certification shall continue in effect until the date the student is admitted to the bar. The certification may be withdrawn by the dean at any time by mailing a notice to that effect to the student and to the clerk of this court. It is not necessary that the notice state the cause for withdrawal unless requested by the student. The certification may be terminated by this

court at any time without notice or hearing and without any showing of cause.

(6) *Supervising Attorney*. An attorney under whose supervision an eligible law student undertakes any activity permitted by this rule shall:

(A) Be a member in good standing of the bar of this court.

(B) Assume responsibility for the quality of the student's work.

(C) Guide and assist the student in preparation to the extent necessary or appropriate under the circumstances.

RULE 47. RULES OF A COURT OF APPEALS

(a) Local Rules.

(1) Each court of appeals acting by a majority of its judges in regular active service may, after giving appropriate public notice and opportunity for comment, make and amend rules governing its practice. A generally applicable direction to a party or a lawyer regarding practice before a court must be in local rule rather than an internal operating procedure or standing order. A local rule must be consistent with -- but not duplicative of -- Acts of Congress and rules adopted under 28 U.S.C. § 2072 and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. The clerk of each court of appeals must send the Administrative Office of the United States Courts a copy of each local rule and internal operating procedure when it is promulgated or amended.

(2) A local rule imposing a requirement of form must not be enforced in a manner that causes a party to lose rights because of a nonwillful failure to comply with the requirement.

(b) Procedure When There Is No Controlling Law. A court of appeals may regulate practice in a particular case in any manner consistent with federal law, these rules, and local rules of the circuit. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local circuit rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

[Amended effective December 1, 1995.]

CIRCUIT RULE 47

RULES BY COURTS OF APPEALS

(a) Amendment -- Notice and Opportunity for Comment. These rules may be amended by the court as provided herein. The court shall give notice and opportunity for comment as provided in this rule with respect to any proposed changes in these rules except where emergency or other conditions render it impractical or unnecessary.

(b) Proposal for Change. Any person may propose a change in these rules by submitting a written suggestion to the court or to its Advisory Committee on Procedures.

(c) Notice of Proposed Amendment by Court. Upon consideration of a proposal from any person or from the Advisory Committee on Procedures, or upon its own motion, the court will, whenever necessary or appropriate, give notice of a proposed change in these rules. Such notice will consist of the text of the proposed change, or a description of the subjects and issues involved, together with a brief explanation of the purpose of the proposal. The notice will be made public as follows:

(1) By posting a copy on the bulletin board next to the public counter in the clerk's office.

(2) By delivering a copy to the *Daily Washington Law Reporter* for publication.

(3) By sending a copy to the chairman of the Advisory Committee on Procedures.

(4) By sending copies to:

(A) The president of the District of Columbia Bar.

(B) The president of the Bar Association of the District of Columbia.

(C) The president of the Washington Bar Association.

(D) The president of the Women's Bar Association.

(E) The presidents of any nationwide bar associations, local chapters of nationwide bar associations, or other voluntary groups of lawyers or citizens that notify the clerk of this court in writing that they wish to receive copies of these notices.

(F) All subscribers to the court's rules and slip opinions.

(d) Comments by Public and Advisory Committee on Procedures. The notice will specify a period of not less than 45 days from the date of its publication in the *Daily Washington Law Reporter* within which any person may submit written comments on the proposed changes to the Advisory Committee on Procedures. That committee shall give consideration to all written comments timely received and shall within 45 days from the close of the comment period transmit to this court its recommendations with respect to the proposal and the written comments it has received.

(e) Final Action by Court. Following receipt of the committee's recommendation, this court may determine that the proposed change should be adopted, that it should be amended and adopted, or that it should be withdrawn. The court will publish notice of its final action respecting the proposal, including the effective date of any change in these Rules, in the manner provided in paragraph (c).

(f) Publication of Amendments Made Without Opportunity for Comment. If an amendment to these rules is made without notice or opportunity for comment, it will be made public in the manner provided in paragraph (c). Such publication shall state the effective date of the amendment, which shall not be earlier than the date of publication.

CIRCUIT RULE 47.1

MATTERS UNDER SEAL

(a) Case with Record Under Seal. Any portion of the record that was placed under seal in the district court or before an agency shall remain under seal in this court unless otherwise ordered. Parties and their counsel are responsible for assuring that materials under seal remain under seal and are not publicly disclosed.

(b) Agreement to Unseal. In any case in which the record in the district court or before an agency is under seal in whole or in part and a notice of appeal or petition for review has been filed, each party shall promptly review the record to determine whether any portions of the record under seal need to remain under seal on appeal. If a party determines that some portion should be unsealed, that party shall seek an agreement on the unsealing. Such agreement shall be promptly presented to the district court or agency for its consideration, and issuance of an appropriate order.

(c) Motion to Unseal. A party or any other interested person may move at any time to unseal any portion of the record in this court, including confidential briefs or appendices filed under this rule. On appeals from the district court, the motion will ordinarily be referred to the district court, and, if necessary, the record remanded for that purpose, but the court may, when the interests of justice require, decide that motion, and, if unsealing is ordered, remand the record for unsealing. Unless otherwise ordered, the pendency of a motion under this rule shall not delay the filing of any brief under any scheduling order.

(d) Briefs Containing Material Under Seal.

(1) *Two Sets of Briefs*. If a party deems it necessary to refer in a brief to material under seal, 2 sets of briefs shall be filed which shall be identical except for references to sealed materials. One set of briefs shall bear the legend "Under Seal" on the cover, and each page

containing sealed material shall bear the legend "Under Seal" at the top of the page. The second set of briefs shall bear the legend "Public Copy -- Sealed Material Deleted" on the cover, and each page from which material under seal has been deleted shall bear a legend stating "Material Under Seal Deleted" at the top of the page. The party shall file 7 copies of the sealed brief and 15 copies of the public brief. Both sets of briefs shall comply with the remainder of these rules, including Circuit Rule 28(d) on length of briefs.

(2) *Service*. Each party shall be served with 2 copies of the public brief and 2 copies of the brief under seal, if the party is entitled to receive the material under seal. (*See, e.g.*, Rule 6(e), Federal Rules of Criminal Procedure.)

(3) *Non-availability to the Public*. Briefs filed with the court under seal shall be available only to authorized court personnel and shall not be made available to the public.

(e) Appendices Containing Matters Under Seal.

(1) *Two Segments of Appendices*; *Number of Copies*. If a party deems it necessary to include material under seal in an appendix, the appendix shall be filed in 2 segments. One segment shall contain all sealed material and shall bear the legend "Under Seal" on the cover, and each page of that segment containing sealed material shall bear the legend "Under Seal" at the top of the page. The second appendix segment shall bear the legend "Public Appendix -- Material Under Seal in Separate Appendix" on the cover; each page from which material under seal has been deleted shall bear the legend "Material Under Seal Deleted" at the top of the page. The party shall file 7 copies of the sealed segment and 7 copies of the public segment of the appendix.

(2) *Service; Number of Copies*. Each party shall be served with one copy of the public segment of the appendix and one copy of the sealed segment, if the party is entitled to receive the material under seal. (*See, e.g.*, Rule 6(e), Federal Rules of Criminal Procedure.)

(3) *Non-availability to the Public.* Segments of appendices filed with the court under seal shall be available only to authorized court personnel and shall not be made available to the public.

CIRCUIT RULE 47.2

APPEAL EXPEDITED BY STATUTE; HABEAS CORPUS PROCEEDING; SENTENCING APPEAL

(a) Appeal Expedited by Statute, and Habeas Corpus Proceeding. Upon filing a notice of appeal in a case invoking 18 U.S.C. § 3145 or § 3731, 28 U.S.C. chapter 153, or 28 U.S.C. § 1826, the appellant shall so advise the clerks of this court and of the district court immediately both orally and by letter. Pursuant to 28 U.S.C. § 1657, this practice shall also be followed in an action seeking temporary or preliminary injunctive relief. In such cases, the clerk of the district court shall transmit a copy of the notice of appeal and a certified copy of the docket entries to the clerk of this court forthwith. The clerk of this court shall thereupon enter the appeal upon the docket and prepare an expedited schedule for briefing and argument. If a hearing occurred, appellant shall order the necessary portions of the transcript on an expedited basis and shall make arrangements with the clerk of the district court for prompt transmittal of the record to this court.

(b) Sentencing Appeal Pursuant to 18 U.S.C. § 3742.

(1) In an appeal from a sentence the court shall, where appropriate upon motion, establish an expedited briefing and argument schedule. Memoranda and replies as provided below shall be filed and served in accordance therewith. An original and 14 copies shall be filed in each case.

(2) The appellant shall file and serve a memorandum of law and fact setting forth appellant's challenge to the sentence. Appellee

shall file and serve a memorandum of law and fact setting forth the response to appellant's challenge. Appellant may file and serve a reply.

(3) Except by permission or direction of this court, the memoranda of law shall not exceed 20 pages, exclusive of pages containing the certificate required by Rule 28(a)(1). The reply memorandum shall not exceed 10 pages.

(4) The memoranda need not contain a table of authorities, a statement of jurisdiction, or a summary of argument.

(5) The filings shall be placed in the public record. Parties should avoid matters that could compromise the confidentiality of the presentence report. Where inclusion of confidential matters is unavoidable, the party should move to have the submission placed under seal.

(6) Where the court is reviewing both sentence and conviction in the same proceeding, the rules set out above, except for 47.2(b)(5), will not apply.

CIRCUIT RULE 47.3

JUDICIAL CONFERENCE

(a) Purpose. In accordance with 28 U.S.C. § 333, the chief judge of this circuit shall summon biennially, and may summon annually, a conference of all the circuit, district, and bankruptcy judges of the circuit in active service, for the purpose of considering the business of the courts and means to improve the administration of justice within the circuit. Every circuit, district, and bankruptcy judge summoned, unless excused by the chief judge, shall attend and remain throughout

the conference. The conference shall be called "The Judicial Conference of the District of Columbia Circuit."

(b) Conference Arrangements and Procedures.

(1) The chief judge of the circuit shall appoint a committee on arrangements for the conference to submit for approval of the circuit judicial council a conference plan including the proposed location and program for the conference. The committee on arrangements shall include both district and circuit judges, and members of the bar.

(2) The chief judge of the circuit shall preside at the conference. The circuit executive of this circuit shall serve as conference secretary, and shall make and preserve a record of conference proceedings. The chief judge may appoint committees to pursue or carry out conference actions or advice, and may fill vacancies in or reconstitute or, upon completion of their assignments, discharge such committees.

(c) Composition. In addition to the circuit, district, and bankruptcy judges, persons invited to participate in the conference shall include:

(1) The senior and retired judges of this court and of the district court.

(2) The United States Magistrate Judges of the District of Columbia.

(3) The circuit executive of this circuit.

(4) The clerks of this court, the district court, and the Bankruptcy Court.

(5) The Chief Staff Counsel of this Circuit.

(6) The Chief United States Probation Officer of the District of Columbia.

(7) The Chief Judge of the United States Tax Court, or such representative of the Tax Court as the Chief Judge of that court designates.

(8) The Director of the Administrative Office of the United States Courts.

(9) The Director of the Federal Judicial Center.

(10) The United States Attorney for the District of Columbia.

(11) The Federal Public Defender for the District of Columbia.

(12) The Director of the District of Columbia Public Defender Service.

(13) The Director of the Administrative Conference of the United States.

(14) The deans of law schools located in the District of Columbia.

(15) The Corporation Counsel of the District of Columbia.

(16) Members of the bar in such numbers as will permit and promote participation by those engaged in the various fields of federal court practice.

(17) Other individuals whose background, position, or achievement will contribute to the purpose and program of the conference.

CIRCUIT RULE 47.4

ADVISORY COMMITTEE ON PROCEDURES

(a) Establishment of Committee; Membership. In accordance with 28 U.S.C. § 2077(b), there shall be an Advisory Committee on

Procedures which shall consist of not less than 15 members of the bar of this court who shall be selected by the judges of the court in regular active service in such a way as to represent a broad cross section of those appearing in the federal courts of the District of Columbia, including representatives from government agencies, law schools, public interest groups, and private practitioners.

(b) Committee Functions. The committee shall, among other things:

(1) Provide a forum for study of the internal operating procedures and rules of this court.

(2) Serve as a conduit from the bar and the public to the court regarding procedural matters and suggestions for changes.

(3) Draft, consider, and recommend, for the court's adoption, rules and internal operating procedures, and amendments thereto.

(4) Render reports from time to time, on its own initiative and on request, to the court and to the Judicial Conference of the District of Columbia Circuit on the activities and recommendations of the committee.

(c) Terms of Members. The members of the committee shall serve 3-year terms that will be staggered in such a way as to enable the court to appoint or reappoint one-third of the committee each year. The court shall appoint one of the members to chair the committee.

CIRCUIT RULE 47.5

PROCESSING OF DIRECT CRIMINAL APPEALS

Absent extraordinary circumstances, a direct criminal appeal will not be held in abeyance pending resolution of a postconviction proceeding in district court.

CIRCUIT RULE 47.6

APPEALS FROM THE ALIEN TERRORIST REMOVAL COURT

(a) In General.

(1) *Perfection*. A party seeking to appeal from a decision of the Alien Terrorist Removal Court shall do so by filing a notice of appeal in the office of the Clerk of the Court of Appeals.

(2) *Appeals Treated as Motions*. Unless otherwise specified herein or ordered by the court, appeals shall be treated and processed by the court as motions. See generally Circuit Rule 27. The appellant shall file, simultaneously with the notice of appeal, 5 copies of a memorandum in support of the appeal, not to exceed 20 typewritten pages in length. No response will be permitted unless specified by this Rule. All submissions shall be filed and, if served, served by hand. An alien not represented by counsel who is unable to file or serve submissions by hand shall do so by the most expeditious means available to the alien that are effective to reach the Department of Justice promptly.

(3) *Submissions to be Filed Under Seal*. Unless otherwise specified herein, all submissions filed in the court in an appeal from the Alien Terrorist Removal Court shall be filed under seal. In addition, any submission containing or referring to classified information shall so indicate in an appropriate legend on the face of the submission. The court and all parties to a removal proceeding shall comply with all applicable statutory provisions for the protection of classified information, and with the "Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information."

(4) *Appointment of Counsel*. Counsel appointed to represent or assist an alien in the Alien Terrorist Removal Court, including any "special attorney" designated under 8 U.S.C. § 1534(e)(3), shall

continue to represent or assist the alien in any proceedings in this court, without additional appointment.

(5) *Expedition.* All appeals from the Alien Terrorist Removal Court shall be disposed of by this court as expeditiously as practicable. Any party to an appeal seeking disposition within a definite time period may move for such relief, stating the grounds in support.

(b) Appeal from the Denial of a Removal Application (8 U.S.C. § 1535(a)).

(1) *Perfection.* The United States may appeal the denial of an application to use the alien terrorist removal procedure, by filing in the court of appeals Clerk's Office, within 20 days of the date of the order appealed from, a notice of appeal accompanied by a memorandum in support of the appeal.

(2) *Record.* The United States shall serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court shall transmit, under seal, the entire record of the application proceeding to the court of appeals.

(3) *Ex Parte Appeal*. An appeal from the denial of a removal application shall be conducted *ex parte* and under seal. No submissions, including the notice of appeal and the memorandum in support of the appeal, shall be served on the alien.

(c) Interlocutory Appeal from Discovery Orders (8 U.S.C. § 1535(b)).

(1) *Perfection.* The United States may appeal a determination of the Removal Court regarding a request for approval of an unclassified summary of evidence, or refusing to make requested findings under 8 U.S.C. § 1534(e)(3), by filing in the court of appeals Clerk's Office a notice of appeal accompanied by a memorandum in support of the appeal.

(2) *Record.* The United States shall serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court shall transmit the entire record of the removal proceeding to the court of appeals. Any portion of the record sealed in the Removal Court shall be transmitted to and maintained by this court under seal.

(3) *Ex Parte Appeal.* An appeal from a discovery determination shall be conducted *ex parte* and under seal. No submissions, except the notice of appeal, shall be served on the alien.

(d) Appeal from a Decision After a Removal Hearing (8 U.S.C. § 1535(c)).

(1) *Perfection.* The United States or the alien may appeal the decision of the Removal Court after a removal hearing, by filing in the court of appeals Clerk's Office, within 20 days of the date of the order appealed from, a notice of appeal accompanied by a memorandum in support of the appeal.

(2) *Automatic Appeal*. In the case of a permanent resident alien in which the alien was denied an unclassified summary of evidence under 8 U.S.C. § 1534(e)(3), and in which appeal is automatic unless waived, the alien shall file, within 20 days of the date of the Removal Court's order, a memorandum in support of the appeal, or a notice that the appeal has been waived. Failure to file a timely memorandum in support of the appeal, or a timely notice of waiver, shall result in dismissal of the automatic appeal for lack of prosecution.

(3) *Record.* The appellant (except in the case of an automatic appeal) shall serve a copy of the notice of appeal on the Alien Terrorist Removal Court. Upon receipt of the notice, the Removal Court shall transmit the entire record of the removal proceeding to the court of appeals. Any portion of the record sealed in the Removal Court shall be transmitted to and maintained by this court under seal.

In the case of an automatic appeal, the Removal Court shall, upon the filing of the Court's order after the removal hearing, transmit a certified copy of the order, together with the record of the removal proceedings, to the court of appeals.

(4) *Briefing*. Within 10 days of the filing of the appellant's memorandum in support of the appeal, the appellee shall file a responsive brief, not to exceed 20 typewritten pages in length. Appellant's reply, if any, shall be due 5 days after the date the response is filed, and shall not exceed 10 pages in length. Briefs or memoranda shall be filed under seal, to the extent necessary to comply with subsection A(3) of this Rule.

(5) *Hearing and Disposition.* As soon as practicable after the filing of the appeal, the court will inform the parties whether it will hear argument on the appeal or dispose of the appeal on the written submissions. The court will dispose of the appeal as expeditiously as practicable.

(e) Appeal From a Release or Detention Order (8 U.S.C. § 1535(e)).

Any appeal from a release or detention order of the Removal Court shall be governed by Circuit Rule 9, except that the appellant's memorandum in support of the appeal shall be filed simultaneously with the notice of appeal.

RULE 48. MASTERS

A court of appeals may appoint a special master to hold hearings, if necessary, and to make recommendations as to factual findings and disposition in matters ancillary to proceedings in the court. Unless the order referring a matter to a master specifies or limits the master's powers, a master shall have power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order including, but not limited to, requiring the production of evidence upon all matters embraced in the reference and putting witnesses and parties on oath and examining them. If the master is not a judge or court employee, the court shall determine the master's compensation and whether the cost will be charged to any of the parties.

[Amended effective December 1, 1994.]

CIRCUIT RULE 48

MASTERS

There is no corresponding Circuit Rule.

APPENDIX OF FORMS

FORM 1. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT

United States District Court for the _____ District of _____

File Number _____

A.B., Plaintiff	)	
	)	
v.	)	Notice of Appeals
	)	
C.D., Defendant	)	

Notice is hereby given that _____ (here name all parties taking the appeal) , (plaintiffs) (defendants) in the above named case,* hereby appeal to the United States Court of Appeals for the _____ Circuit (from the final judgment) (from an order (describing it)) entered in this action on the ___ day of _____, 19__.

(s)_____
Counsel for_____
Address:_____

* See Rule 3(c) for permissible ways of identifying appellants.

FORM 2. Notice of Appeal to a Court of Appeals From a Decision of the United States Tax Court

United States Tax Court
Washington, D.C.

A.B., Petitioner	)	
	)	
v.	)	Docket No. _____
	)	
Commissioner of Internal Revenue, Respondent	)	

Notice of Appeal

Notice is hereby given that (here name all parties taking the appeal) * hereby appeal to the United States Court of Appeals for the ____ Circuit from (that part of) the decision of this court entered in the above captioned proceeding on the ____day of _____, 19__ (relating to _____).

(s)_____
Counsel for_____
Address:_____

* See Rule 3(c) for permissible ways of identifying appellants.

FORM 3. PETITION FOR REVIEW OF ORDER OF AN AGENCY, BOARD, COMMISSION OR OFFICER

United States Court of Appeals for the _____ Circuit

A.B., Petitioner	)	
	)	
v.	)	Petition for Review
	)	
XYZ Commission,	)	
Respondent	)	

(here name all parties bringing the petition) * hereby petition the court for review of the Order of the XYZ Commission (describe the order) entered on _____, 19__.

(s)_____
Attorney for Petitioners
Address:_____

* See Rule 15.

FORM 4. AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL *IN FORMA PAUPERIS*

United States District Court for the _____ District of _____

United States of America	)	
	)	
v.	)	No. _____
	)	
A.B.	)	

Affidavit in Support of Motion to Proceed on Appeal *In Forma Pauperis*

I, _____ being first duly sworn, depose and say that I am the _____, in the above-entitled case; that in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

[LIST ISSUES HERE]

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

a. If the answer is yes, describe each source of income, and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account?

a. If the answer is yes, state the total value of the items owned.

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

a. If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

_____

SUBSCRIBED AND SWORN TO Before Me This _____ Day Of _____, 19__.

Let the applicant proceed without prepayment of costs or fees or the necessity of giving security therefor.

_____
District Judge

FORM 5. NOTICE OF APPEAL TO A COURT OF APPEALS FROM A JUDGMENT OR ORDER OF A DISTRICT COURT OR A BANKRUPTCY APPELLATE PANEL

United States District Court for the _____ District of _____

In re	)	
_____,	)	
Debtor	)	
	)	File No. ___
_____,	)	
Plaintiff	)	
	)	
v.	)	
_____,	)	
Defendant		

Notice of Appeal to United States Court of Appeals for the _____ Circuit

_____, the plaintiff [or defendant or other party] appeals to the United States Court of Appeals for the _____ Circuit from the final judgment [or order or decree] of the district court for the district of _____ [or bankruptcy appellate panel of the _____ circuit], entered in this case on _____, 19__ [here describe the judgment, order, or decree] _____.

The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

Dated _____

Signed _____

Attorney for Appellant

Address: _____

_____

[Amended effective December 1, 1993.]

APPENDIX OF THE CIRCUIT RULES OF THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

I. COURT OF APPEALS FEE SCHEDULE.

II. RULES OF DISCIPLINARY ENFORCEMENT OR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

III. APPELLATE MEDIATION PROGRAM

I. COURT OF APPEALS FEE SCHEDULE
(28 U.S.C. § 1913)

The following fees are to be paid to clerks, court of appeals (except that no fees are to be charged for services rendered on behalf of the United States):

(1) For docketing a case on appeal or review, or docketing any other proceeding, $100. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed.

(2) For every search of the records of the Court and certifying the results thereof, $15.

(3) For certifying any document or paper, whether the certification is made directly on the document, or by separate instrument, $5.

(4) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records.

(5) For reproduction of magnetic tape recordings, either cassette or reel-to-reel, $15 including the cost of materials.

(6) For reproduction of the record in any appeal in which the requirement of an appendix is dispensed with by any court of appeals pursuant to FRAP 30(f), a flat fee of $25.

(7) For each microfiche or microfilm copy of any court record, where available, $3.

(8) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the Court, $25.

(9) For a check paid into the Court which is returned for lack of funds, $25.

(10) Fees to be charged and collected for copies of opinions shall be fixed, from time to time, by each court, commensurate with the cost of printing.

(11) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(12) The clerk shall assess a charge of up to three percent for the handling of registry funds, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(13) For usage of electronic access to court data, 60 cents per minute of usage (provided the court may, for good cause, exempt persons or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information). All such fees collected shall be deposited to the Judiciary Automation Fund. This fee shall apply to the United States. (The Judicial Conference has approved an advisory note clarifying the judiciary's policy with respect to exemption from this fee. The advisory note is shown below.)

The Judicial Conference has prescribed a fee for electronic access to court data, as set forth above in the Miscellaneous Fee Schedule. The schedule provides that the court may exempt person or classes of persons from the fees, in order to avoid unreasonable burdens and to promote public access to such information. Exemptions should be

granted as the exception, not the rule. The exemption language is intended to accommodate those users who might otherwise not have access to the information in this electronic form. It is not intended to provide a means by which a court would exempt all users.

Examples of persons and classes of persons who may be exempted from electronic public access fees include, but are not limited to: indigents; bankruptcy case trustees; not-for-profit organizations; and voluntary ADR neutrals.

Effective April 18, 1995

II. RULES OF DISCIPLINARY ENFORCEMENT FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The United States Court of Appeals for the District of Columbia Circuit, in furtherance of its power and responsibility under Rule 46 of the Federal Rules of Appellate Procedure, and its inherent power and responsibility to supervise the conduct of attorneys who are admitted to practice before it, or are admitted for the purpose of a particular proceeding (*pro hac vice*), promulgates the following Rules of Disciplinary Enforcement.

RULE I

Standards For Professional Conduct

(a) For misconduct as defined in paragraph (b) below, or for failure to comply with these Rules or any rule or order of this Court, and after notice and opportunity to be heard, any attorney admitted to practice before this Court may be reprimanded (publicly or privately), suspended from practice before this Court, disbarred, or subjected to such other disciplinary action as the circumstances may warrant.

(b) Acts or omissions by an attorney admitted to practice before this Court, individually or in concert with any other person or persons, which violate any Code of Professional Responsibility or other officially-adopted body of disciplinary rules applicable to the conduct of the attorney constitute misconduct. The Code of Professional Responsibility adopted by this Court is the Code of Professional Responsibility adopted by the District of Columbia Court of Appeals, as amended from time to time by that Court, except as otherwise provided by specific Rule of this Court.

RULE II

Committee On Admissions And Grievances

(a) The Committee. The Court shall appoint a standing committee of six members of the bar of this Court to be known as the Committee on Admissions and Grievances. Each member shall be appointed to serve for a term of three years. A member is eligible for reappointment to one additional term. Each member may serve until a successor has been appointed. If a member holds over after the expiration of the term for which that member was appointed, the period of the member's holdover shall be treated as part of the term of his or her successor. The Court may revoke any appointment at any time. In the case of any vacancy, the successor appointed shall serve the unexpired term of his or her predecessor. The Court shall designate one of the members of the Committee to serve as Chair.

(b) Confidentiality. Except to the extent reasonably necessary to carry out its responsibilities and unless otherwise ordered by the Court, the Committee shall treat in confidence the referral to it of an application for admission or a grievance, its consideration of such a matter, and its report to the Court.

(c) Admissions.

(1) The Court may refer to the Committee an application for admission to practice before the Court whenever that application or other available information raises a question as to whether the applicant is qualified for admission under the standards set forth in Rule 46(a) of the Federal Rules of Appellate Procedure.

(2) Upon referral by the Court of any such application for admission, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. The Committee shall provide the applicant with a copy of its findings and recommendations if the Committee recommends denial of the application.

(3) In considering applications for admission referred to it by the Court, the Committee may solicit relevant information from the

applicant or from others. In addition, the applicant may submit to the Committee any information that he or she deems to be relevant, and shall be entitled to be represented by counsel.

(4) The applicant shall have the burden of establishing that he or she has the character and qualifications necessary for admission and shall cooperate with the Court and the Committee in their consideration of the application.

(d) Grievances.

(1) The Court may refer to the Committee any accusation or suggestion of misconduct on the part of any member of the bar, or any failure to comply with these rules or any rule or order of this Court, for such investigation, hearing and report as the Court deems advisable. Any such matter shall be referred to in these Rules as a Grievance.

(2) Upon referral by the Court of any Grievance, the Committee shall take such action as is appropriate, subject to any special instructions from the Court, and shall report its findings and recommendations to the Court. In such matters, the Committee shall be guided by Rule I of these Rules.

(3) The Committee shall consider each Grievance referred to it and, if in its opinion further action is warranted, it shall serve a statement thereof on the member of the bar of this Court to whom the Grievance relates, by certified mail, return receipt requested, addressed to the last office address filed with the Clerk. As respondent thereto, the member shall file an answer with the Chair of the Committee subscribed and sworn to under oath on or before thirty (30) days after the date of mailing. The Chair of the Committee, upon good cause shown, may extend the time to answer.

(4) If the Committee concludes after investigation and review that a hearing is unnecessary because (a) the facts are not in dispute, (b) sufficient evidence to support the Grievance is not present, (c) there is pending another proceeding against the respondent, the

disposition of which in the judgment of the Committee should be awaited before further action is considered, or (d) a hearing is otherwise not warranted under the circumstances presented, the Committee shall report to the Court its recommendation for disposition of the matter.

(e) Hearings by the Committee.

(1) The Committee may sit as a fact-finding body and upon reasonable notice to the respondent may hold hearings on the Grievance.

(2) The respondent shall be entitled to be represented by counsel. The respondent may submit to the Committee all relevant information he or she deems appropriate and may request that the Committee consider the testimony of witnesses.

(3) The persons who may be present at the hearing are the members of the Committee, the respondent, the respondent's counsel, if any, and a witness providing testimony.

(4) At the respondent's request and expense, the hearing will be recorded.

(5) The Committee shall report its findings and recommendations to the Court. A copy of its findings and recommendations shall be forwarded simultaneously to the respondent.

(f) Duty of Respondent to Cooperate. It shall be the duty and responsibility of the respondent and his or her counsel to cooperate with the Committee. If a respondent fails to respond to the Committee, the Committee may recommend to the Court that discipline be imposed.

(g) Show Cause Order or Hearing by the Court.

(1) Upon receipt of the Committee's finding that misconduct occurred, the Court may issue an order requiring the respondent to show cause why discipline should not be imposed. The Court may invite the Committee or any member of the bar of this Court to reply to the respondent's answer to the show cause order or to pursue the Grievance against the respondent at a show cause hearing.

(2) If the Grievance is sustained, the Court may reprimand, suspend, disbar or otherwise discipline the respondent.

RULE III

Attorneys Convicted Of Crimes

(a) Upon the filing with this Court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the Court has been convicted in any court of the United States, or of the District of Columbia, or of any state, territory, commonwealth or possession of the United States of a serious crime as defined in paragraph (F) below, the Clerk shall enter an order immediately suspending that attorney, regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. The Clerk shall immediately serve a copy of such order upon the attorney by certified mail, return receipt requested, addressed to the last office address filed with the Clerk. Upon good cause shown, the Court may set aside such order when it appears in the interest of justice to do so.

(b) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the Court shall refer the matter to the Committee on Admissions and Grievances for a recommendation to the Court on the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that the recommendation for final discipline shall not be made until all appeals from the conviction are concluded.

(c) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the Court

may refer the matter to the Committee for a recommendation to the Court for appropriate action, including the institution of a disciplinary proceeding.

(d) In any disciplinary proceedings instituted against an attorney based upon a conviction, a certified copy of a judgment of conviction of an attorney for a crime shall be conclusive evidence of the commission of that crime.

(e) An attorney suspended under the provisions of this Rule shall be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed, but the reinstatement shall not terminate any disciplinary proceeding then pending against the attorney. In any such proceeding, evidence relating to the conduct which resulted in the conviction may be considered despite the reversal of the conviction.

(f) The term "serious crime" includes any felony and also includes any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

RULE IV

Discipline Imposed By Other Courts Or Agencies

(a) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this Court has been disciplined for professional misconduct as defined in Rule I.B to another court, or by an agency of the United States as defined in 5 U.S.C. § 551, this Court may refer the matter to the Committee on Admissions and Grievances for a recommendation for appropriate action, or may issue a notice directed to the attorney containing:

(1) a copy of the judgment or order from the other court or agency; and

(2) an order to show cause directing that the attorney inform this Court within the time specified of any claim by the attorney predicated upon the grounds set forth in paragraph (c) below that the imposition of the identical discipline by this Court would be unwarranted and the reasons therefor.

(b) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this Court may be deferred until such stay expires.

(c) After consideration of the response called for by the order issued pursuant to paragraph (a) above or after expiration of the time specified in the order, this Court shall impose the identical discipline unless the attorney demonstrates, or this Court is satisfied that:

(1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(2) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or

(3) the imposition of the same discipline by this Court would result in grave injustice; or

(4) the misconduct warrants substantially different discipline.

When this Court determines that any of these elements exists, it shall enter such other order as it deems appropriate.

(d) Except as provided in paragraph (c) above, a final adjudication in another court or in an agency of the United States that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this Court.

(e) This Court may at any stage ask the Committee to conduct disciplinary proceedings or to make recommendations to the Court for appropriate action in light of the imposition of professional discipline by another court or by an agency.

RULE V

Disbarment On Consent Or Resignation In Other Courts

Any attorney admitted to practice before this Court who is disbarred on consent or resigns from the bar of any other court of the United States or the District of Columbia, or from the Bar of any state, territory, commonwealth or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this Court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, be disbarred.

RULE VI

Disbarment On Consent While Under Disciplinary Investigation Or Prosecution

(a) Any attorney admitted to practice before this Court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment from practicing law before this Court, but only by delivering to this Court an affidavit stating that the attorney desires to consent to disbarment and that:

(1) the attorney's consent is freely and voluntarily rendered; the attorney is not being subject to coercion or duress; the attorney is fully aware of the implications of so consenting;

(2) the attorney is aware that there is a presently pending investigation or proceeding involving allegations that there

exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(3) the attorney acknowledges that the material facts so alleged are true or that he has no defense to the allegations; and

(4) the attorney so consents because the attorney knows that if a Grievance were predicated upon the matters under investigation, or if the proceeding were prosecuted, the attorney could not successfully defend himself.

(b) Upon receipt of the required affidavit, the Clerk shall enter an order disbarring the attorney.

(c) An order disbarring an attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this Rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this Court.

RULE VII

Reinstatement

(a) After Disbarment or Suspension. An attorney who is suspended for a definite period shall automatically be reinstated at the end of the period of suspension upon the filing with the Clerk of an affidavit of compliance with the provisions of the order. An attorney who is suspended indefinitely or disbarred may not resume practice until reinstated by order of this Court. A suspension may be directed to run concurrently with a suspension mandated by another court, in which event the attorney shall be eligible for reinstatement in this Court when that suspension expires, and will automatically be reinstated upon filing with the Clerk an affidavit indicating that the period of suspension has run and that the attorney has been reinstated by the other court.

(b) Hearing on Application. Petitions for reinstatement by a disbarred or indefinitely suspended attorney under this Rule shall be filed with the Clerk. Upon receipt of the petition, the Clerk shall promptly refer the petition to the Committee, which shall assign the matter for prompt hearing before the Committee. At the hearing the petitioner shall have the burden of demonstrating by clear and convincing evidence that he or she possesses the moral and professional qualifications required for admission to practice law before this Court and that the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice. The Committee shall make its recommendation to the Court, which may adopt its findings, schedule a hearing on the matter, or take such other action as it deems appropriate.

(c) Conditions of Reinstatement. If the petitioner is found by the Court to be unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the petitioner will be ordered reinstated. Reinstatement may be conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the misconduct which led to the suspension or disbarment. If the petitioner has been suspended or disbarred for five years or more, reinstatement may also be conditioned upon the furnishing of proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(d) Successive Petitions. No petition for reinstatement under this Rule may be filed within one year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

RULE VIII

Attorneys Specially Admitted

Whenever an attorney applies to be admitted or is admitted to this Court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this Court for any alleged misconduct of that attorney arising in the course of, in the preparation for, or in connection with such proceedings.

RULE IX

Proceedings Where An Attorney Is Declared To Be Mentally Incompetent Or Is Alleged To Be Incapacitated

(a) Attorneys Declared Mentally Incompetent. Where an attorney who is a member of the bar of this Court has been judicially declared incompetent or involuntarily committed to a mental hospital, the Court, upon proper proof of the fact, shall enter an order suspending such attorney from the practice of law effective immediately and for an indefinite period until further order of the Court. A copy of such order shall be served upon the attorney, his guardian and the Director of the mental health hospital in such a manner as the Court may direct.

(b) Attorneys Alleged to be Incapacitated. Whenever it appears to the Court that a member of the bar may be incapacitated by reason of mental infirmity or illness or because of the use of drugs or intoxicants, the Court may take or direct such action as it deems necessary or proper to determine whether the attorney is so incapacitated, including the examination of the attorney by such qualified medical experts as the Court shall designate, and including reference of the matter to the Committee. Failure or refusal to submit to such examination shall be *prima facie* evidence of incapacity. If the Court concludes that the attorney is incapacitated and should not be permitted to continue to practice law before the Court, it shall enter an order suspending the attorney for an indefinite period and until further order of the Court. The Court may provide for such notice to the respondent attorney of proceedings in the matter as is deemed proper and advisable and may appoint an attorney to represent the respondent if the respondent is without representation.

(c) Claim of Disability During Disciplinary Proceedings. If during the course of a disciplinary proceeding the respondent contends that he or she is suffering from a disability by reason of a mental or physical infirmity or illness or because of the use of drugs or intoxicants, and that this disability makes it impossible for the respondent to make an adequate defense, the Court shall enter an order immediately suspending the respondent from continuing to practice law before this Court until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of paragraph (B) above.

(d) Application for Reinstatement. Any attorney suspended for incompetency, mental illness or because of the use of drugs or intoxicants may apply to the Court for reinstatement once a year or at such shorter intervals as the Court may direct in the order of suspension. The application shall be granted by the Court upon a showing by clear and convincing evidence that the attorney's disability has been removed and he or she is fit to resume the practice of law. The Court may take or direct such action as it deems necessary or proper to make a determination of whether the attorney's disability has been remedied, including a direction for an examination of the attorney by such qualified medical experts as the Court shall designate. The Court may direct that the expenses of such an examination shall be paid by the attorney.

Where an attorney has been suspended because of a judicial declaration of incompetence or involuntary commitment to a mental hospital and has thereafter been judicially declared to be competent, the court may dispense with further evidence and direct the reinstatement of the attorney upon such terms as are deemed proper and advisable.

(e) Waiver of Physician-Patient Privilege. The filing of an application for reinstatement by an attorney who has been suspended for disability shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the attorney during the period of his disability for the condition underlying the suspension. The attorney may be required to disclose the name of every psychiatrist,

psychologist, physician and hospital by whom or in which the attorney has been examined or treated since his suspension for the condition underlying the suspension, and may be required to furnish the Court with written consent for such psychiatrists, psychologists, physicians or hospitals to divulge such information or records as may be requested by the medical experts designated by the Court.

RULE X

Duty Of Attorneys To Notify The Court Of Convictions Or Discipline By Other Courts Or Agencies

If an attorney admitted to practice before this Court (a) is subjected to public discipline for professional misconduct as defined in Rule I.B; (b) is indicted or charged with a felony or serious crime as defined in Rule III.F; (c) is convicted of a felony or misdemeanor; (d) is disbarred on consent; or (e) resigns from the bar of any court while an investigation into an allegation of misconduct is pending, the attorney shall so notify the Clerk of this Court in writing within ten days of such discipline, indictment, charge, conviction, disbarment on consent or resignation.

RULE XI

Duties Of The Clerk

(a) Upon being informed that an attorney admitted to practice before this Court has been convicted of any crime or has been subjected to discipline by another court, the Clerk of this Court shall determine whether the clerk of the court in which such conviction occurred or in which such discipline was imposed has forwarded a certificate of such conviction or discipline to this Court. If a certificate has not been so forwarded, the Clerk shall promptly obtain a certificate and file it with this Court.

(b) Whenever it appears that any person disbarred, suspended, publicly reprimanded, or disbarred on consent by this Court is admitted to practice law in any other jurisdiction or before any other

court, the Clerk of this Court shall, within ten days of that action transmit a certified copy of the order of disbarment, suspension, reprimand, or disbarment on consent to the disciplinary authority for each other jurisdiction or court, and the administrative tribunal, if any, affected by the misconduct.

(c) The Clerk of this Court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order of this Court imposing public discipline upon any attorney admitted to practice before this Court.

RULE XII

Jurisdiction

Nothing contained in these Rules shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of criminal Procedure, or to deprive the Court of its inherent disciplinary powers.

RULE XIII

Effective Date

These Rules shall become effective on July 1, 1984, and shall apply to proceedings brought thereafter and also shall apply to pending proceedings unless their application would not be feasible or would be unjust.

III. APPELLATE MEDIATION PROGRAM

NOTE: In 1995, the Chief Staff Counsel's Office became part of the Office of the Clerk and is currently referred to as the Legal Division.

Court of Appeals for the District of Columbia Circuit Appellate Mediation Program

A number of federal Circuit Courts of Appeal and state appellate courts have implemented mediation projects within the last few years in response to increasing caseloads and delay. Mediation is often one component of a larger effort to manage the Court's work. In the D.C. Circuit, mediation is intended to supplement the Court's 1986 Case Management Plan, which was undertaken to accommodate a sixty percent increase in filings and pending cases over a two-year period. Mediation is also intended to help parties by curtailing the expense involved in protracted appeals and by providing a forum which stimulates the development of creative resolution options that would otherwise not be achievable by Court order or by the parties acting on their own.

The Appellate Mediation Program uses mediation to achieve settlement of cases. It also encourages the settlement of some issues in a case and the procedural streamlining of cases to simplify briefing and to reduce motions activity. Mediation efforts that are unsuccessful initially may result, weeks or even months later, in settlement.

Mediation differs considerably from arbitration and negotiation. In arbitration, an outcome is imposed upon the parties. In negotiation, discussion takes place between the parties, usually with no assistance from a neutral. In mediation, a neutral helps parties reach a resolution that is acceptable to them. Cases are settled only if the parties agree to a course of action that will terminate their case so that no further Court involvement is required.

The Appellate Mediation Program handles fewer than one hundred cases a year. Nonetheless, it has had a significant impact on the

Court's workload. Cases that are settled do not proceed to oral argument, thus saving the time of judges and law clerks who would otherwise prepare for argument. Issues and positions are clarified in the mediation process so that, even if settlement is not achieved, the Court benefits from more efficient briefing. Finally, mediation frequently saves time and money for the litigants themselves. It can also produce agreements that meet their needs more effectively than the relief that could be provided through the court proceeding. Mediation is offered at no cost to the parties.

Case Selection

Cases filed with the Court of Appeals are screened by attorneys in the Chief Staff Counsel's Office for their appropriateness for mediation. Screening occurs approximately 45 days after a case has been docketed in the Court of Appeals.

No criminal cases enter the program. Civil cases are reviewed on an individual basis, with a number of factors considered in making the eligibility determination. These factors include the nature of the underlying dispute, the relationship of the issues on appeal to the underlying dispute, the availability of incentives to reach settlement or limit the issues on appeal, the susceptibility of these issues to mediation, the possibility of effectuating a resolution, the number of parties and the number of related pending cases.

Parties are encouraged to request mediation by completing a “Request to Enter Appellate Mediation Program” form and sending it to the Clerk *in duplicate*. Although such requests are not automatically granted, the Chief Staff Counsel gives them special consideration.

Program Mediators

The Court has selected distinguished senior members of the bar to serve as mediators as well as attorneys who have had broad experience mediating complex civil cases. The mediators are experienced litigators who enjoy the Court's full confidence.

The mediators protect the confidentiality of all proceedings and do not communicate with the Court about what transpires during mediation sessions. Mediators are required to recuse themselves from handling any cases in which they perceive a conflict of interest.

Mediators are not paid for their services, but are reimbursed by the Court for minor out-of-pocket expenses such as trips to the Courthouse. The Court also provides parking, administrative support and limited secretarial services if needed.

The primary role of program mediators is to make every effort to help parties reach a settlement or, at a minimum, to help parties resolve some issues in the case. If settlement is not possible, the mediators will help parties clarify or eliminate issues to expedite the litigation process.

Confidentiality

Confidentiality is ensured throughout the mediation process. Attorneys in the Chief Staff Counsel’s Office do not confer with judges in selecting cases for mediation. Mediators protect the confidentiality of all proceedings. Papers generated by the mediation process are not included in Court files, and information about what transpires in the mediation process is not at any time made known to the Court. The Circuit Executive's Office, which is responsible for program administration and evaluation and liaison between the mediators and Court personnel, maintains strict confidentiality about the content of the mediation in particular cases.

The above is not intended to guarantee absolute secrecy about the identity of the cases that are chosen for mediation. Nor is it meant to preclude dissemination of information about the types of cases going through the mediation process and about overall program results.

Generic information about the program and cases entering it is available, and reports are generated for analysis and evaluation. Individual cases that have been resolved through mediation may be publicly identified or brought to the Court's attention as program successes if the litigants consent to such a disclosure.

Mediation Procedures

The Chief Staff Counsel will identify cases for mediation approximately 45 days after they have been docketed in the Court of Appeals. Lead counsel and intervenors involved in cases selected for mediation will receive a letter from the Court describing the program and assigning a mediator. A copy of the Court's *en banc* Order defining the procedures to be followed will be included in the mailing. At the same time, the Court will send to the assigned mediator a copy of the judgment or order on appeal, any opinion issued by the District Court or agency, the appellant's or petitioner's statement of issues on appeal, D.C. Cir. Rule II(a)(l) statements, and all relevant motions.

Within fifteen days of the selection of a case for mediation, counsel will submit a position paper not to exceed ten pages to the mediator. The position paper will outline the key facts and legal issues in the case and will include a statement of motions filed and their status. Position papers are not briefs, are not filed with the Court and need not be served on the other party unless the mediator so directs.

The mediator will schedule the initial mediation session within 45 days of the selection of the case for mediation. The mediator will set the date for the initial session, which will normally be held at the Court. However, a mediator may decide to hold a session in his/her office. The mediator will schedule additional mediation sessions, as needed. Whereas all cases in mediation are subject to normal scheduling for briefing and oral argument, it is possible that additional mediation sessions in a case will affect the scheduling process. If so, the attorneys shall file a motion to defer or postpone the briefing and/or oral argument date(s), representing that the mediator, whom they shall not identify by name, concurs in the request. Attorneys may

not file any other motions that would notify the Court that the case is in mediation.

The Court requires that counsel for parties attend all mediation sessions. All parties are also strongly urged by the Court to attend each mediation session. Each party represented must have counsel or another person present with actual authority to enter into a settlement agreement during the session. In cases involving the United States government or the District of Columbia government, senior attorneys on either side of the case may attend mediation sessions so long as someone with settlement authority can be reached during conference sessions. It is the responsibility of the United States Department of Justice attorneys in these sessions to furnish the mediator with the name and title of the government official authorized to effectuate settlement under 28 CFR, Part O, Subpart Y, whom the mediator and attorney can contact by phone during the mediation session. In cases involving the District of Columbia government, it is the responsibility of Corporation Counsel attorneys to furnish the mediator with the name and title of the government official authorized to effectuate settlement who can be contacted by phone during the mediation session. When settlement authority for the United States government rests with an official at the rank of Assistant Attorney General, its equivalent or higher, or with members of an independent agency, or when settlement authority for the district of Columbia government rests with officials above the rank of Corporation Counsel, the requirement that the official or members be reachable during the mediation session is waived unless the mediator for good reason specifically so provides in writing after reviewing the mediation papers.

If settlement is reached, the agreement, which shall be binding upon all parties, will be put into writing, and counsel will file a stipulation of dismissal. If the case is not settled, it will remain on the docket and proceed as though mediation had not been initiated. Regardless of the outcome of a case, mediators will complete a case evaluation form for each case mediated. Each attorney participating in the mediation will be asked to complete an evaluation form.

The Mediation Process

Mediation begins at a joint meeting attended by the mediator, counsel for the parties and, whenever possible, the parties themselves. The mediator explains how the mediation is to be conducted. After this introduction, each party is asked to explain to the other party or parties and to the mediator its views on the matter in dispute. The party who filed the appeal typically will speak first. The mediator is likely to refrain from asking questions or allowing the parties to ask questions of each other until all parties have had an opportunity to speak.

Once the views of all parties have been stated in the joint session, the mediator probably will want to caucus individually with each of the parties. The purpose of these caucuses is to allow the mediator and the parties to explore more fully the needs and interests underlying their stated positions. It is also to help the parties begin thinking about settlement options that perhaps go beyond what could be accomplished in the court proceeding alone. The mediator will encourage the parties to think broadly about the problem and will help them to explore options for settlement.

Additional joint sessions may be held to explore settlement possibilities, or this work may be done just in the separate caucuses. The mediator, in consultation with the parties, will decide which approach is likely to be more beneficial under the circumstances of the particular case.

(Rev. Jan. 1995)

United States Court of Appeals For The District of Columbia Circuit Order Establishing Appellate Mediation Program

BEFORE: Mikva, Chief Judge; Wald, Edwards, Ruth B. Ginsburg, Silberman, Buckley, Williams, D.H. Ginsburg, Sentelle, Henderson and Randolph, Circuit Judges

It is **ORDERED**, by the Court, *en banc*, that civil appeals from the United States District Court, petitions for review of agency action, and original actions may be referred to a mediator designated by the Court to meet with counsel and parties to facilitate settlement of the case, to simplify issues or otherwise to assist in the expeditious handling of an appeal. Mediation will be initiated by order of the Court. It is

FURTHER ORDERED that mediation sessions must be attended by counsel for each party or another person with actual authority to settle the case. Additionally, the parties themselves are strongly encouraged to attend the sessions. In cases involving the U.S. government or the District of Columbia government, senior attorneys on either side of the case may attend mediation sessions so long as someone with settlement authority can be reached during conference sessions except that in cases in which settlement authority for the United States government rests with officials of the rank of Assistant Attorney General (or its equivalent) or higher, or with the members of an independent agency or in cases in which settlement authority for the District of Columbia government rests with officials above the rank of Corporation Counsel, this provision shall not apply unless the mediator for good reason specifically so provides in writing after reviewing the mediation papers. Failure of counsel to attend sessions may result in the imposition of sanctions.

The Circuit Executive for the D.C. Circuit shall serve as the program administrator of the Appellate Mediation Program. A party may request mediation, but the Chief Staff Counsel will ultimately determine which cases are appropriate for mediation. Case selection

will take place approximately 45 days after a case has been docketed in the Court of Appeals. Lead counsel will receive notice of case selection and of the mediator assigned.

An initial mediation session will be scheduled by the mediator within 45 days of a case's selection for mediation. The mediator will schedule additional sessions, as needed. Mediation sessions will be held at the U.S. Courthouse for the District of Columbia, 3rd and Constitution Avenue, N.W., Washington, D.C. If mutually agreeable, however, the mediator may hold sessions in his/her office.

The Court will send the mediator a copy of the judgment or order on appeal, any opinion issued by the District Court or agency, the appellant's or petitioner's statement of issues on appeal, D.C. Cir. Rule 11(a)(1) statements, and all relevant motions. Within fifteen days of the case's selection for mediation, counsel shall prepare and submit to the mediator a position paper of no more than ten pages, stating their views on the key facts and legal issues in the case. The position paper will include a statement of motions filed and their status. All motions filed or decided while mediation is underway are to be identified for the mediator and submitted to him/her upon request. Copies of documents submitted to the mediator need not be served upon opposing counsel unless the mediator so directs. Documents prepared for mediation sessions are NOT to be filed with the Clerk's Office except as noted below.

All cases in mediation remain subject to normal scheduling for briefing and oral argument by the Clerk's office. If it is the mediator's view that additional mediation sessions are required and that such sessions would affect the briefing schedule in the case, the attorneys shall request an extension by filing a motion to defer or postpone the briefing and/or oral argument date(s). The attorneys shall represent that the mediator, whom they shall not identify by name, concurs in the request.

The content of mediation discussions and proceedings, including any statement made or document prepared by any party, attorney or other participant, is privileged and shall not be disclosed to the Court

or construed for any purpose as an admission against interest. To that end, the parties shall not file any motion or other document that would disclose any information about the content of a mediation, whether or not it has been concluded. This means that parties are prohibited from using any information obtained as a result of the mediation process as a basis for any motion other than a motion affecting the briefing or argument schedule.

No party shall be bound by anything said or done at a mediation session unless a settlement is reached. If a settlement is reached, the agreement shall be reduced to writing and shall be binding upon all parties to the agreement.

Mediators who have been selected by the Court to serve in the Appellate Mediation Program are highly experienced members of the bar who have been involved in the types of litigation that come before the Court. Mediators, who will serve without compensation, have received special training to help parties reach agreement and avoid the time, expense and uncertainty of further litigation. Mediation is offered to parties at no cost.

If a mediator makes any oral or written suggestion as to the advisability of a change in any party's position with respect to settlement, counsel for that party should promptly transmit the suggestion to his or her client if that client is not present at the mediation session. Counsel should explain to clients, whether present at mediation or not, the suggestions put forward by mediators and their import. It is

FURTHER ORDERED that if a case is settled, counsel shall file a stipulation of dismissal. Such stipulation must be filed within 30 days after the settlement is reached unless a short extension is requested by the attorneys by motion. If a case cannot be resolved through mediation, it will remain on the docket and proceed as if mediation had not been initiated; therefore, no notification to the Court is necessary.

A copy of this Order will be posted in the Office of the Clerk of the United States District Court for the District of Columbia and the Office of the Clerk of the United States Court of Appeals for the District of Columbia Circuit. A copy of this Order also will be provided to all counsel in cases ordered into mediation.

Per Curiam

EFFECTIVE: November 28,1988
As amended April 19,1989, May 1, 1992, and March 20, 1993

Addendum

In response to inquiry by the program's volunteer mediators, the Court has determined that the order establishing the appellate mediation program allows the mediators, in their discretion, to call or write clients or representatives of government agencies to request their attendance at mediation sessions. Any communication by the mediator with the persons or entities described above, however, must be fully disclosed to the counsel of record. The order also permits the mediator to communicate, in the presence of counsel, settlement offers or other appropriate information to clients or representatives of government agencies.

March 7, 1990